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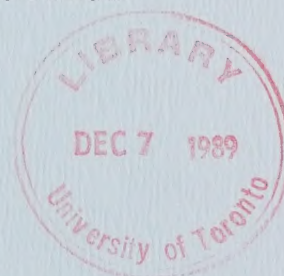
VOLUME: 161

DATE: Wednesday, November 22nd, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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EA-87-02

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, November 22nd,
1989, commencing at 8:00 a.m.

VOLUME 161

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

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MR. B. CAMPBELL)	
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MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
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MR. R. BARNES)	ASSOCIATION
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

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MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

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962	Publication entitled: Estimation of the effect of intensive logging on ungulates in the White River drainage, authored by Schuerholz, McNamee and Massie.	28558
963	MNR policy No. TS020406, District Cutting Licence Used as an Interim Cutting Authority.	28599

1 ---Upon commencing at 8:00 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ms. Murphy?

5 MS. MURPHY: Yes. I would like to just
6 take care of a couple of undertakings that were given
7 yesterday.

8 First of all, with respect to the Lakes
9 and Rivers Improvement Act, there is a document, the
10 Guidelines and Criteria for Approvals under the Lakes
11 and Rivers Improvement Act, which provides guidance as
12 to when that Act applies and what should happen next.
13 That is Exhibit 684 as has previously been provided.

14 Under the Fisheries Act, I understand the
15 situation to be that enforcement of that Act is subject
16 to some federal and provincial agreements and that
17 there are no further provincial policies with respect
18 to enforcement of that legislation.

19 We have made enquiries about specific
20 policies under the Public Lands Act and will provide
21 those if they exist.

22 With respect to the Crown Timber Act,
23 first of all, Mr. Chairman, you asked me about the
24 authority to delegate and my best information right
25 now, I have asked for a copy of this section to be

1 provided to me and when I have it I will read it in.
2 The general authority to delegate is, I'm advised, in
3 the Ministry of Natural Resources Act, Section 6, and I
4 will read that in when I get it.

5 With respect to the actual exercise of
6 that authority in respect of the Crown Timber Act, I
7 provide a document, this is a bulletin TS010301. This
8 is a list of the delegations of authority from the
9 Minister to various persons with respect to the Crown
10 Timber Act. (handed)

11 THE CHAIRMAN: I think we will exhibit
12 this so we keep it with all the material.

13 MS. MURPHY: That's fine. Are we at 953?

14 THE CHAIRMAN: Yes, that's right.

15 ---EXHIBIT NO. 953: MNR Bulletin No. TS010301, list of
16 delegations of authority re:
Crown Timber Act.

17 MS. MURPHY: And further, with respect to
18 the Crown Timber Act, we were asked to provide policies
19 and procedures that deal with the enforcement of that
20 legislation.

21 I provide policy No. TS020701 and the
22 procedure also TS020701 that deals with infractions
23 under the Crown Timber Act, and I have provided that to
24 my friend last night.

25 THE CHAIRMAN: Very well.

1 MS. MURPHY: (handed)

2 THE CHAIRMAN: All right. This will be
3 Exhibit 954.

4 ---EXHIBIT NO. 954: MNR Policy and Procedure No.
5 TS020701 dealing with infractions
6 under Crown Timber Act, and
7 Procedure No. TS020703 dealing
8 with penalties.

9 MS. MURPHY: I'm advised that for the
10 record I should indicate that there is also a second
11 procedure that is attached, procedure TS020703 that
12 deals with penalties specifically. And we are trying
13 to get some more copies made this morning, all of us
14 are having trouble with our photocopying machines.

15 THE CHAIRMAN: It's probably too early in
16 the morning for them.

17 MR. CASSIDY: Too cold.

18 MS. MURPHY: And just before I sit down I
19 would like to just make one comment. As you will see
20 when you look at the procedure, there is a specific
21 report made for each incident, and I would just caution
22 that if people are intending to raise specific
23 incidents, these witnesses obviously will not have had
24 the opportunity to learn anything about the facts
25 behind any particular incident, and my friend has
advised me that he is not looking for facts behind any
particular incident. So we have not located any

1 particular information.

2 JOHN EDWARD OSBORN,
3 JOHN CARY,
4 DAVID GORDON,
5 WILLIAM STRAIGHT,
6 DAVID EULER,
7 JAMES ALEXANDER MacLEAN,
8 TOM TWORZYANSKI, Resumed

9 CONTINUED CROSS-EXAMINATION BY MR. LINDGREN:

10 Q. Good morning, Dr. Euler, I have a
11 couple of questions for you flowing out of our
12 discussion yesterday about old growth forests.

13 As I recall your testimony yesterday, Dr.
14 Euler, you have indicated that there appears to be no
15 problem with the abundance of old growth forest. Do
16 you recall that testimony?

17 DR. EULER: A. Yes, and I did qualify I
18 think or tried to as saying that at this point in time,
19 meaning today.

20 Q. Did you have a particular definition
21 of old growth forest in mind when you made that
22 statement?

23 A. Well, generally I mean overmature,
24 basically overmature forest. If we use the forestry
25 term of overmature; that is, it's no longer putting on
an increment of wood in an economical way, basically
that is what I mean, yes.

Q. Does the Ministry have specialists

1 that are out in the field or perhaps looking at FRI
2 maps trying to identify old growth forests?

3 A. Well, we don't have specialists to do
4 that, no. We do attempt to identify those, yes. Like,
5 they are identified in FRI and other routine
6 procedures.

7 Q. Well, as I understand it, the FRI
8 will perhaps indicate age-class but it will not
9 indicate the ecological significance or importance of
10 the forest?

11 A. Oh well, that's true, yes. That's
12 true. It is an age-class but then that is how we know
13 it's old growth by the age-class.

14 Q. And just one final question on that
15 point. When you say at this particular juncture in
16 time there appears to be no problem with the abundance
17 of old growth or overmature forest, what is the basis
18 for that statement?

19 Has the Ministry undertaken any specific
20 studies of the nature and extent of overmature forests
21 in Ontario?

22 A. Well, if I understand correctly,
23 we've had evidence throughout this hearing of the
24 age-class structure of the forest and in looking at
25 that evidence I conclude that at the moment there is a

1 lot of forest that would be in the category of old
2 growth.

3 Q. But if I understand that statement,
4 sir, you are indicating that there have been no
5 specific studies looking at whether or not there is an
6 abundance of overmature or old growth forest in
7 Ontario?

8 A. No, I don't think there have been a
9 specific study, that is true. See, my concern isn't so
10 much for what is there right now, it's what is going to
11 happen in the future as we manage this forest. I want
12 to make sure that we don't lose that old growth in the
13 future and now is the time to start taking action to
14 make sure the future is taken care of.

15 Q. Wouldn't it be advisable to have some
16 baseline data from which to work with?

17 A. Absolutely, absolutely, and we are
18 trying. Like, we got that study started in Temagami,
19 we have got to do more. As you pointed out, we haven't
20 yet done the night creatures. It isn't that we don't
21 care about them or don't know about them, it's just we
22 can't do everything all at once, and so we are starting
23 the process and we should continue and I think we will
24 continue.

25 Q. My second question that arises out of

1 your discussion yesterday, Dr. Euler, has to do with
2 the discussion we had about the rare plants that was
3 the subject matter of Mr. Pyzer's letter. And, as you
4 may recall, there was a certain amount of confusion
5 about the terms 'rare' and the relationship of that
6 definition to the endangered species list?

7 A. That's right.

8 Q. Can you confirm for me, Dr. Euler,
9 that there are many species that are in fact not on the
10 endangered species list but are in fact more rare than
11 the species found on that list?

12 A. No, I can't confirm that.

13 Q. Well, for example, Dr. Euler, it's my
14 understanding that the birds that are to be monitored
15 in the Ontario Rare Breeding Bird Program are in fact
16 not on the endangered species list but many of those
17 species are in fact rarer than the bird species we find
18 on the list.

19 A. I must have misunderstood, because I
20 thought you were talking about plants and now you are
21 talking about birds. I will be happy to talk about
22 birds. My other point was with relation to plants.
23 And I am sorry I may have missed that. So now we are
24 going to talk about birds.

25 Q. Well, the first question was more

1 general. Can you confirm for me that there are both
2 plants and animals that are more rare than the species
3 that we currently find on the endangered species list
4 and, as an example, I offered the bird example?

5 A. Okay. See, I have to think a bit to
6 answer that. See, first I've got to think of the birds
7 on the endangered species list; peregrine falcon,
8 golden eagle, bald eagle, then I have got to think of
9 those birds on the other list and try to come to some
10 measure of abundance and it's very difficult for me to
11 just do that from memory off the top of my head.

12 I hesitate to answer that because it
13 would be so easy to be wrong and a person just doesn't
14 carry that around in his head.

15 THE CHAIRMAN: Mr. Lindgren, what turns
16 on whether it's rare or not rare vis-a-vis how it's
17 treated when discovered?

18 MR. LINDGREN: That is the issue, Mr.
19 Chairman. There seems to be some confusion, at least
20 on the part of some district managers, as to whether or
21 not species are rare or whether or not they are rare
22 only because they appear on the endangered species
23 list.

24 And I'm trying to establish, Mr.
25 Chairman, that there are in fact rare species that are

1 not on the endangered species list but they are
2 nevertheless rare.

3 DR. EULER: Oh, and that's okay, we can
4 agree on that, no problem. There are definitely
5 creatures not on the endangered species list that are
6 rare.

7 MR. LINDGREN: Q. Are there species not
8 on the list that the Ministry or that you, in your
9 personal or professional opinion, would regard as
10 endangered?

11 DR. EULER: A. I just can't come to
12 grips with that question. I mean, it really requires a
13 fair bit of thought and careful review of the facts.

14 There is no question, Mr. Chairman, we
15 have a problem with this word 'rare'. The Ministry has
16 a definition, there's a definition given by COSEWIC,
17 the committee on endangered species, they have a
18 definition - that is slightly different than the
19 Ministry's definition - then there is this Atlas of
20 Rare Vascular Plants by Argus and White, they use the
21 word in a slightly different way.

22 The very term 'rare' has confusion in it
23 and it makes it very difficult.

24 THE CHAIRMAN: But does it matter if
25 there is confusion if when you encounter the specie,

1 whether it's a bird or animal, you treat it in terms of
2 an area of concern planning process?

3 DR. EULER: Absolutely, Mr. Chairman.

4 THE CHAIRMAN: I can understand quite
5 readily that if somebody thinks a particular specie is
6 abundant that you don't have to worry about and,
7 therefore, not plan specifically for it.

8 DR. EULER: That's right.

9 THE CHAIRMAN: That is one thing, but
10 don't you treat these species as they occur, and if
11 it's a named specie, whether animal or plant, you would
12 decide at that point whether or not, regardless of what
13 list there is--

14 DR. EULER: That's right.

15 THE CHAIRMAN: --it should be treated
16 under the area of concern planning process. And if
17 that is the way the Ministry goes about it, Mr.
18 Lindgren, I fail to see what the difference is in terms
19 of whether everybody is using the same definition.

20 MR. LINDGREN: Mr. Chairman, if I
21 understand the correspondence from Mr. Pyzer, a rare
22 species may only receive AOC treatment if it is found
23 on the endangered species list.

24 THE CHAIRMAN: That wasn't the way I
25 interpreted that letter.

1 MR. LINDGREN: That letter suggests, sir,
2 that the reserve that was established was for fisheries
3 and/or aesthetic values being a skyline reserve. I do
4 not read that letter as indicating it was prompted
5 solely for the presence of rare plants.

6 THE CHAIRMAN: Well, it may not have been
7 but it doesn't indicate that it wouldn't have been
8 treated -- those plants would not have been treated
9 under area of concern planning process because they
10 were identified by Dr. Henderson and he was expressing
11 some concern about it, and I don't think that letter
12 necessarily indicates that Mr. Pyzer or the Ministry
13 wouldn't have used the area of concern planning process
14 apart from the fisheries guidelines, if the fisheries
15 guidelines did not cover it.

16 What is your opinion, Dr. Euler?

17 DR. EULER: Well, it would be very
18 similar. The fact that a person has taken the time to
19 write the district a letter and say I'm concerned about
20 these plants, that triggers an action and it clearly
21 triggered an action here. And people may disagree with
22 the action, that is very legitimate, maybe you or
23 others disagree that the action was appropriate, and
24 what we should be discussing is the nature of the
25 action, whether it's appropriate or not appropriate.

1 But it did trigger an action and, yes, the district
2 manager made a mistake when he wrote that sentence.
3 Well, mistakes happen.

4 But I think that it's clear from the
5 letter that he did the best he could to deal with the
6 issue and if he needs more knowledge or if he needs
7 help from Dr. Henderson or another plant ecologist, and
8 he should seek that help, but the argument now might be
9 over whether the actions were appropriate, not whether
10 in fact he took action.

11 And I think most district managers would
12 do their best to take some kind of action in this
13 circumstance.

14 MR. LINDGREN: Q. Perhaps I can tie this
15 line of questioning off with this question, Dr. Euler.
16 I have before me the most current list of rare,
17 threatened endangered, extirpated or extinct species in
18 Ontario that the Ministry has produced, and I take it
19 that you are familiar with that list?

20 DR. EULER: A. Yes. I didn't memorize
21 every species on it. I'm familiar with it.

22 Q. That's fair, Dr. Euler. Would you
23 agree with me that this list is incomplete and there
24 are in fact further rare, threatened, endangered
25 species that should be on it?

1 THE CHAIRMAN: I think we covered that
2 evidence; did we not, in an earlier panel?

3 MS. MURPHY: I don't even know what list
4 it is he's referring to. He just said there's this
5 current list. I don't know if it's the same one we
6 were talking about yesterday or not.

7 MR. LINDGREN: Q. This is the June, 1989
8 list, Dr. Euler.

9 DR. EULER: A. Is it an exhibit in this
10 hearing?

11 Q. I'm not sure that this 1989 list is
12 an exhibit.

13 MS. MURPHY: He's asking him to comment
14 about a document that hasn't been put to him. We just
15 don't know what it is.

16 THE CHAIRMAN: There was an earlier list
17 though; was there not, that was put before the Board.
18 It might not have been the June, '89, it might have
19 been an earlier one, but it was the same idea, and I
20 recall some discussion about the fact that that list is
21 constantly updated and it may not include all species.

22 MS. MURPHY: I don't know.

23 MR. LINDGREN: Q. Dr. Euler, if you wish
24 I can bring this to your attention by offering the copy
25 to you. There is an indication that the list is

1 updated annually. I'm not sure that the most recent
2 list has been put into evidence.

3 In any event, I'm not interested in doing
4 that, I'm just asking in a general way or for a general
5 answer, Dr. Euler. In your professional opinion, are
6 there rare, threatened or endangered species that can
7 or should be added to this list?

8 DR. EULER: A. I just don't -- I don't
9 see how I can answer that. See, I have got to look at
10 that list and then I have got to think about that a
11 bit. I just hesitate to say something right off the
12 top of my head like that.

13 It's possible certainly but, you see,
14 there is so much behind that question, there is so much
15 one has to know about distribution and numbers.

16 THE CHAIRMAN: But is that not the
17 purpose of creating the list in the first place?

18 DR. EULER: Well, exactly.

19 THE CHAIRMAN: So that it can be added to
20 when data the is in?

21 DR. EULER: Yeah. You see, what he's
22 asking me, in my personal opinion, is this adequate.
23 Well, that requires a very thoughtful answer and that
24 is the Ministry's best shot at it. I can say that with
25 authority, that's the Ministry's best effort.

1 Now, sometimes I disagree with the
2 Ministry, you know, and I want to be very careful if I
3 do that that I outline that carefully and thoughtfully
4 and I don't want to do that unless I know exactly what
5 I'm saying. So I think we can say with authority
6 that's the Ministry's best estimate of rare.

7 THE CHAIRMAN: But is that unusual in
8 terms of having wildlife biologists take a look at any
9 list and trying to get absolute unanimity with respect
10 to every specie?

11 DR. EULER: Not unusual at all. We spend
12 many happy hours arguing over things like this.

13 MR. LINDGREN: Q. Perhaps I can just
14 simply ask you this: In your personal or professional
15 opinion, Dr. Euler, are there candidate species for
16 this list that are not --

17 DR. EULER: A. Yes. Yes, mm-hmm.

18 Q. And can you give us perhaps a few
19 examples of those candidate species?

20 A. Now, we are still talking about the
21 plants list?

22 Q. No, birds.

23 A. Or is this everything?

24 Q. This is everything. The rare,
25 threatened, endangered species list that the Ministry

1 puts out annually. Are there candidate species in your
2 opinion that should be added to that list. I believe
3 your answer was yes?

4 A. Yeah. And now I'm trying to think of
5 an example, right, because that is what you want.

6 Q. That's right.

7 A. Well, probably some of those species
8 on the rare bird survey that FON is conducting would be
9 candidates for that list.

10 MS. MURPHY: I think the original
11 question was: Are there candidates, and the witness
12 said yes. He didn't say anything about in his
13 professional opinion about anything. He said, yes,
14 there are. And I don't know how he can out of his head
15 give a list, he's already said he can't.

16 THE CHAIRMAN: Well, even if there are
17 candidates for the list, doesn't it have to go through
18 the process that we heard about earlier in terms of
19 some degree of consensus reached amongst those who
20 compile the list until--

21 DR. EULER: Yeah.

22 THE CHAIRMAN: --there is some kind of
23 understanding about which one should be officially
24 included and which ones shouldn't be?

25 DR. EULER: Yeah, and you review the data

1 so you try to make the decision as objectively as you
2 can. And right now FON, for example, is spending a
3 fair bit of effort with Ministry support to do that, to
4 collect data about this list of birds that are
5 candidates for that rare listing, and it's just a bit
6 premature to comment on that because the data are not
7 in, they are being collected.

8 THE CHAIRMAN: Well, what is the point,
9 Mr. Lindgren? Suppose there is a candidate specie that
10 three months from now is going to be on the list, is
11 not yet on the list, where are you going with this?

12 MR. LINDGREN: Well, the point simply is
13 this, I intend to go no further. If there is a species
14 that is to be added this year or next year or the year
15 after, that particular species will not have received
16 or is unlikely to receive AOC protection unless and
17 until it appears on the endangered species list. That
18 is how I read this.

19 THE CHAIRMAN: Well, that I don't believe
20 is the evidence. Is that the evidence of the panel?

21 DR. EULER: No, no, it isn't, Mr.
22 Chairman. No, it's not.

23 THE CHAIRMAN: If somebody expresses a
24 concern whether or not it's on the list, as I
25 understand it, the Ministry will respond by treating it

1 under the AOC planning process.

2 DR. EULER: Yes.

3 MR. LINDGREN: That is the evidence of
4 this panel, but I'm saying to you, sir, that is our
5 concern. I will have to address that in our own case,
6 because it's clear that we are not going to get very
7 much further here.

8 THE CHAIRMAN: Very well.

9 MR. LINDGREN: Q. However, Dr. MacLean,
10 turning to you, we have reviewed your CV and it's quite
11 clear that you have an extensive background in the area
12 of fisheries and fisheries management.

13 DR. MacLEAN: A. Yes, I do.

14 Q. And you are now the Director of the
15 Wildlife Branch?

16 A. Yes, I am.

17 Q. When can we expect to see some of the
18 fish which appear on the COSEWIC list, such as the
19 Aurora Trout, which appear in Ontario but which are not
20 currently on the endangered species list?

21 A. I have no idea.

22 Q. Can you confirm for me that to this
23 date there are no fish species listed on the endangered
24 species list?

25 A. I can confirm that, yes.

1 Q. Why is that, Dr. MacLean?

2 MS. MURPHY: Mr. Chairman, I'm really
3 trying not to interfere with my friend, but there
4 really has been a lot of evidence already about how
5 species are added to these lists, about status reports
6 and how COSEWIC works and, in fact, even about the
7 Aurora Trout already in the hearing. I'm just
8 concerned that we are going back over old ground.

9 THE CHAIRMAN: Well, Mr. Lindgren,
10 without going through the evidence as to how they get
11 on the list, let's confine your questions to the
12 monitoring aspects, how these species when encountered
13 are dealt with. I think that is appropriate for this
14 panel.

15 MR. LINDGREN: Well, perhaps I can ask
16 the more general -- well, perhaps first we can ask Dr.
17 MacLean for his response to that comment.

18 Q. When these species are encountered,
19 how are they dealt with?

20 DR. MacLEAN: A. What species are we
21 talking about?

22 Q. Well, I've just given you an example
23 such as the Aurora Trout which is COSEWIC listed and
24 appears in Ontario but to this point has not appeared
25 on the endangered species list.

1 A. I have not been involved in any
2 process that would give me background to talk to that.

3 Q. All right, thank you. Perhaps I can
4 ask you a more general question then. With respect to
5 monitoring and the evidence of this panel, in your
6 professional opinion, what is the single most important
7 shortcoming of the Ministry's fisheries database from
8 this perspective?

9 From a monitoring perspective, in your
10 professional opinion, what is the most important
11 shortcoming in terms of how forestry or timber
12 management operations affect fisheries populations?

13 MS. MURPHY: I think that is two
14 different -- at least two different questions. I'm
15 not --

16 THE CHAIRMAN: What do you mean by
17 shortcoming in what, the data?

18 MR. LINDGREN: A shortcoming in either
19 the existing data knowledge or shortcoming in the way
20 that knowledge is accumulated with respect to those
21 impacts.

22 THE CHAIRMAN: On fish?

23 MR. LINDGREN: On fish.

24 THE CHAIRMAN: From forestry operations?

25 MR. LINDGREN: Correct.

1 THE CHAIRMAN: If in fact this panel
2 agrees there is a shortcoming.

3 DR. MacLEAN: I think we have indicated
4 quite clearly that we have a large number of
5 uncertainties in the area of timber
6 management/fisheries interactions because there has
7 been a lack of data collection in Ontario that would
8 allow us to relate knowledge from elsewhere to the
9 Ontario scene.

10 MR. LINDGREN: Q. Okay. Thank you.

11 Mr. Cary, can I ask you to turn to
12 Exhibit 954 which is the policy and procedures for
13 processing infractions under the Crown Timber Act.

14 Do you have that document, Mr. Cary?

15 MR. CARY: A. Yes, I do.

16 Q. I do have a few questions of a
17 general nature about this document, Mr. Cary, but
18 before I enter into that discussion, perhaps as a
19 preliminary question, can you please advise me that
20 once penalties have been assessed and collected, where
21 does that money go; is it forwarded directly to the
22 Treasurer of Ontario or is it retained in the district
23 office?

24 A. It's forwarded to the Treasurer of
25 Ontario, I believe.

1 Q. And once the Treasurer of Ontario has
2 that money, is it earmarked or rechanneled back into
3 the timber management program?

4 A. It's not earmarked.

5 Q. In light of that answer, Mr. Cary,
6 would you agree with me that this in effect provides a
7 disincentive for district managers to investigate
8 infractions and to impose penalties?

9 THE CHAIRMAN: Oh no, no. That is a
10 assuming, Mr. Lindgren, that charges are going to be
11 laid or penalties assessed solely for the fact that it
12 may benefit a district.

13 MR. LINDGREN: No.

14 THE CHAIRMAN: That would be an improper
15 motive to impute upon any enforcement agency.

16 MR. LINDGREN: No, I'm not imputing an
17 improper motive, I'm looking at it from a cost/benefit
18 perspective.

19 Why would a district manager spend staff
20 time and his own staff budget in order to fully
21 investigate these infractions as per this policy only
22 to collect \$10?

23 THE CHAIRMAN: I would suggest because
24 it's his duty to enforce the legislation, just like
25 it's his duty to carry out any other activities within

1 his mandate.

2 MR. STRAIGHT: Mr. Chairman, and as a
3 past district manager I can confirm that for you. That
4 was not a factor.

5 MR. CASSIDY: Sorry, Mr. Straight. If
6 it's Forests for Tomorrow's suggestion that in some way
7 a district manager or whoever has responsibility for
8 laying a charge would lay a charge solely that he would
9 generate funds for his program.

10 MR. LINDGREN: That is not the
11 suggestion, sir.

12 MR. CASSIDY: You are going to hear a lot
13 of complaint about that because that is an improper
14 motive.

15 THE CHAIRMAN: Well, that is exactly why
16 I jumped in. That line is totally inappropriate.

17 MR. LINDGREN: And that, sir, was not the
18 line of questioning I was about to embark upon.

19 MR. CASSIDY: Good.

20 MR. LINDGREN: Q. In any event, I would
21 ask, Mr. Cary, to turn to the first page of the
22 procedure in this document, not the policy but the
23 procedure on the next page.

24 MR. CARY: A. I have that.

25 Q. There is an indication that a person

1 who cuts, hauls or is in possession of Crown timber
2 without authority may be subject to one or more of the
3 three proceedings listed there. The first is criminal
4 prosecution for Theft under the Criminal Code.

5 Now, Mr. Cary, are you aware of any theft
6 charges that have been laid by the Ministry under the
7 Criminal Code in relation to Crown timber?

8 A. I'm not personally aware of any of
9 those.

10 Q. Is any other member on this panel
11 aware of theft charges in relation to Crown timber?

12 MR. STRAIGHT: A. I have heard anecdotal
13 evidence to that point, that that has occurred.

14 Q. On the basis of that knowledge, Mr.
15 Straight, would it be your position that theft charges
16 are frequent or infrequent?

17 A. In my own personal experience I have
18 not personally witnessed any.

19 THE CHAIRMAN: I think you can assume
20 from the panel's evidence that they are probably not
21 that frequent.

22 MR. LINDGREN: Thank you.

23 Q. Then turning to the third proceeding,
24 it's indicated that the Ministry may undertake a civil
25 action to recover the value of the timber. And, again,

1 I would like to ask you, Mr. Cary, are you aware of any
2 such civil actions?

3 MR. CARY: A. I am not personally aware
4 of any civil actions.

5 Q. Is any other member of the panel
6 aware of such civil actions? I take it that the
7 answer is no, Mr. Cary?

8 A. That I believe is the consensus.

9 THE CHAIRMAN: Does that answer, Mr.
10 Cary, include not the value of the timber but to bring
11 civil action to recover the fine imposed? There have
12 been those types of actions; have there not?

13 MR. CARY: The civil action is described
14 on page 2 of this procedure.

15 THE CHAIRMAN: I take it there is an
16 action, as I read the Act, that the Minister can bring
17 to recover a fine which an alleged person who has been
18 assessed a penalty fails to pay?

19 MR. CARY: I don't know if that is the
20 part or not. It says here:.

21 "Common law provides remedies for an
22 owner whose timber has been taken without
23 consent."

24 And that is the opening sentence of that
25 particular part of the procedure. The two main

1 remedies are court actions for trespass and for
2 conversion.

3 So I can't -- I am sorry, Mr. Chairman, I
4 don't know the answer to your question.

5 THE CHAIRMAN: Okay. I think what you
6 are saying is, you are not aware of any actions to
7 recover the value of the timber, but surely there must
8 have been actions to recover the fines imposed which
9 were not paid; would that not be the case?

10 MR. CARY: Yes, I believe there is.

11 THE CHAIRMAN: Because I think if you
12 take a look at the Act, the Minister assesses the
13 penalty, sends out a letter and says to somebody pay
14 this amount. If that person fails to pay that amount,
15 the Minister can then bring an action for the recovery
16 of the penalty.

17 And I would think that not everyone - I
18 have no knowledge of course - but I would think that
19 not everyone would necessarily respond to the letter;
20 like the Ministry might have to take the second step to
21 recover it.

22 MR. CARY: I believe I found in procedure
23 TS020703, which is the last procedure:

24 "If a refuses to pay a penalty, advice is
25 to be sought from Legal Services Branch

1 and recovery of the penalty may be placed
2 in the hands of the court or the central
3 collection agency. If a penalty is not
4 paid by the last day of the year
5 following, the licence may be forfeited,
6 penalties are subject to interest
7 charges."

8 THE CHAIRMAN: And I think there is a
9 two-year limitation period on that; is there not?

10 MR. CARY: I'm unable to answer that.

11 MS. MURPHY: Yes, Mr. Chairman, your
12 interpretation is correct, that the Minister can also
13 undertake court action in situations where the person
14 refuses to pay. Our information is that that set of
15 circumstances is also unusual.

16 THE CHAIRMAN: Okay. Thank you.

17 MR. LINDGREN: Q. Mr. Cary, then aside
18 from the civil action to collect unpaid penalties, I
19 take it then that you are unaware of any court actions
20 that were brought in trespass or for conversion, the
21 remedies that we were looking at a moment or two ago?

22 MR. CARY: A. That is correct.

23 Q. Thank you. Can I ask you to turn to
24 page 7 of the procedure. And here on page 7 begins a
25 discussion of the practices for penalties under the

1 Crown Timber Act or regulations.

2 It continues for a few pages, and then on
3 page 10 under the paragraph entitled: Uniformity, we
4 found some statements that are relevant to the
5 discussion we started yesterday; and, that is, the
6 principles that are to be applied in imposing and
7 assessing the penalties under the Crown Timber Act.
8 The opening of this paragraph provides:

9 "Each person who has jurisdiction to
10 levy a penalty shall attempt to levy
11 similar penalties in similar cases."

12 And then the paragraph goes on to list
13 five general principles that may be of assistance to
14 persons imposing penalties; is that correct?

15 A. That's correct.

16 Q. Now, looking at guiding principle No.
17 3, there is an indication that:

18 "Where the infraction is flagrant,
19 destructive or repetitious, a penalty of
20 three to five times the stumpage charges
21 ought to be considered depending on the
22 facts..."

23 And I think that was the thrust of our
24 discussion yesterday, it's a highly fact specific; is
25 that correct?

1 A. Yes.

2 Q. Is it fair to say then as a general
3 principle that the most severe penalty; i.e., three to
4 five times stumpage charges are reserved for what the
5 Ministry regards as the most serious offences.

6 A. Yes, for that particular infraction.

7 Q. Thank you. Now, a few moments ago
8 you just referred to the second procedure that is
9 attached to this exhibit. If I may ask you to turn to
10 that procedure which is simply entitled: Penalties.
11 And the second paragraph on the first page indicates
12 that:

13 "A licensee's or timber operator's
14 cooperation and understanding of Ministry
15 legislation, policies and guidelines
16 takes precedence over punitive measures
17 to deal with offences."

18 Does this mean, Mr. Cary, that if a
19 person does not understand the legislation or the
20 policy or the guidelines that person will not be
21 penalized or is less likely to be penalized?

22 A. No, it does not mean that.

23 Q. Well, I'm unclear as to the meaning
24 of that statement, and perhaps you can very briefly
25 clarify it for me.

1 I'm unclear as to why the Ministry
2 apparently is taking the position that so-called
3 punitive measures to deal with offences wouldn't
4 generate the cooperation and understanding of Ministry
5 legislation, policy and guidelines?

6 A. Well, I think it's meant as a general
7 guiding principle to field staff and we believe, and I
8 think it's been an effective way of dealing with timber
9 operators in obtaining their cooperation and
10 understanding, and that has been our philosophy for
11 some time now and we feel that's the appropriate way.
12 It doesn't mean to say we don't assess penalties, it
13 means that is our approach.

14 Q. On paragraph 2 of this page, Mr.
15 Cary, there is an indication that:

16 "If the offence is continuing on a
17 licence, the Ministry is authorized to
18 withdraw the approval to cut in the area
19 involved. This effectively stops the
20 infractions in that part of the licence
21 though monitoring is necessary to ensure
22 that infractions do not continue in the
23 remainder of the licence."

24 First of all, are you aware of situations
25 caught by that paragraph; are you aware of situations

1 where the cut approval has been withdrawn?

2 A. I have never personally withdrawn a
3 cut approval, so I cannot recall any situations.
4 Perhaps somebody else on the panel.

5 Q. Mr. Gordon?

6 MR. GORDON: A. I am aware of one
7 situation where we didn't specifically withdraw the
8 total cutting approval, but what we did is we withdrew
9 the authority to cut within the area where an
10 infraction had taken place.

11 Q. Does any other panel member have
12 anything to add in terms of experience with this
13 paragraph?

14 MR. TWORZYANSKI: A. I'm familiar with a
15 similar situation as described by Mr. Gordon.

16 Q. Thank you. Now, there is a reference
17 in the passage that I just read to the necessity of
18 monitoring to ensure that infractions do not continue
19 in the remainder of the licence. What form of
20 monitoring would be carried out to ensure that
21 infractions do not continue?

22 MR. CARY: A. Cut inspections would be
23 carried out.

24 Q. And where the cut approval has been
25 withdrawn, would the frequency of the cut inspections

1 be increased?

2 A. There would be no cutting there.

3 Q. But to ensure that there is no
4 cutting, would --

5 A. We would make sure that there was no
6 cutting there.

7 Q. I'm asking above and beyond the
8 normal frequency of the cut inspections, in this kind
9 of situation would the Ministry get out into the field
10 more often?

11 A. If that was considered appropriate
12 they would.

13 Q. Okay, thank you. Now, on page 2 and
14 3 of this procedure, Mr. Cary, at the bottom of page 2
15 and again continuing on to the top of page 3 there are
16 a number of different penalties that may be charged
17 against an offender under the Crown Timber Act, Section
18 48, and at the bottom of page 2 there is an indication
19 that:

20 "A penalty of one to five times stumpage
21 may be imposed for the offences listed
22 thereunder such as cutting without
23 approval or cutting without a licence."

24 And I think this confirms the broad range
25 of discretion that we were speaking of yesterday; is

1 that correct, Mr. Cary, the fact that the district
2 manager has the discretion to impose anything from one
3 to five times stumpage for those enumerated offences?

4 A. And for those penalties that he can
5 assess, which is less than \$2,000.

6 Q. Well, that's correct.

7 A. Yes, you are right.

8 Q. And then on the middle of page 3 we
9 see certain penalties that have been established for
10 wasteful practice. And these appear to be automatic,
11 there is no discretion, these are just simply flat
12 penalties to be imposed where wasteful practices have
13 been detected; is that correct?

14 A. That's correct.

15 Q. Now, looking at these very briefly
16 it's indicated that:

17 "\$2 will be the penalty for each piece of
18 merchantable timber not utilized, \$3 for
19 each high stump, \$5 for each tree left
20 standing that the offender was licensed
21 to cut, and \$10 for each lodged tree."

22 Now, is it fair to say, Mr. Cary, having
23 regard to those penalties, leaving a piece of
24 merchantable timber on the ground to rot will attract a
25 lower penalty than leaving a tree standing?

1 A. Well, if you look at it like that,
2 yes, except a tree standing can contain quite a few
3 pieces of merchantable timber. This is for a piece of
4 merchantable timber, it may be less than the length of
5 the tree. So there could be more than one piece per
6 tree.

7 Q. Well, I'm unclear as to the rationale
8 behind that, particularly when I look at the \$10
9 penalty for each lodged tree. It seems to indicate
10 that leaving the piece of merchantable timber on the
11 ground to rot will attract a lower penalty than if it
12 were left standing or if it were lodged in other trees.

13 MS. MURPHY: If I could just point out
14 that the values that are set out here come from the
15 regulations.

16 MR. LINDGREN: I'm aware of that, Ms.
17 Murphy.

18 MS. MURPHY: That's fine.

19 THE CHAIRMAN: Okay. But if they come
20 from the regulation or the statute, Section 48, where
21 is your line of questioning going? That is set by the
22 Legislature.

23 MR. LINDGREN: Well, presumably --

24 THE CHAIRMAN: What can the Board do here
25 in terms of changing any of that?

1 MR. LINDGREN: Well, I think we had this
2 discussion a couple of weeks ago, Mr. Chairman. I
3 think the Board indicated that it may be willing to
4 identify certain recommendations in terms of amending
5 legislation or the regulations.

6 THE CHAIRMAN: That's as far as this
7 Board could go--

8 MR. LINDGREN: That's correct.

9 THE CHAIRMAN: --to recommend a change in
10 the legislation.

11 MR. LINDGREN: Now, we've heard evidence
12 from this panel that the Ministry has in fact
13 recommended further amendments to the Crown Timber Act
14 that may or may not be passed by the Legislature. I
15 take it that by and large the Ministry has some degree
16 of influence over the amendments that are in fact
17 imposed on legislation.

18 Q. In fact, the question here is: Did
19 these penalties that we find in the regulations
20 originate from the MNR and, if so, what is the
21 rationale for the discrepancies that we see, or are you
22 aware of the origins?

23 MR. CARY: A. I don't know what you mean
24 by discrepancies and I know that the regulations, and
25 that is where these penalties are laid out, have to

1 be -- can be recommended by MNR but they are subject to
2 approval by the higher bodies.

3 Q. That's right. I didn't ask my
4 question clearly, Mr. Cary. I was wondering whether
5 these penalties were in fact recommended by the
6 Ministry at the time the regulation was passed?

7 A. I can't answer that question. I
8 wasn't involved in this particular revision of the
9 Ontario regulations.

10 Q. Okay, that's fine, Mr. Cary. Can I
11 ask you to turn to page 17 of this document.

12 MR. MARTEL: Before you leave that, in
13 the new proposed changes that you indicated were
14 forthcoming, has MNR made a recommendation to adjust
15 this?

16 MR. CARY: What I remember saying was
17 that we are moving away from penalties to fines and
18 those fines were going to be based on severity of the
19 offence rather than the value of the wood.

20 MR. MARTEL: Okay.

21 MR. LINDGREN: Q. I'm sorry, Mr. Cary,
22 could you repeat that last statement.

23 MR. CARY: A. I hope I can. I said, in
24 my discussion of the proposed amendments the Ministry
25 was moving away from assessments of penalties to a fine

1 structure and for wasteful practices and unauthorized
2 cutting we are moving away from assessing penalties
3 for the value of the wood to fines for the severity of
4 the offence.

5 Q. And let me pursue that angle perhaps,
6 Mr. Cary. Do you have page 17 before you, sir, page 17
7 of the procedure? This is a precedent letter with
8 respect to the imposition of Crown Timber Act
9 penalties.

10 A. Precedent No. 1?

11 Q. That's correct.

12 MS. MURPHY: Is that page 17.

13 MR. LINDGREN: Q. I'm looking at the
14 middle of the page, Mr. Cary. Can you quickly or
15 briefly confirm for me that the stumpage fees vary for
16 each species listed there?

17 MR. CARY: A. Yes, that's -- well, two
18 are the same but one is different.

19 Q. So, for example, on this particular
20 hypothetical, and I recognize it as a hypothetical
21 situation, Mr. Cary, looking at poplar: cutting down a
22 volume of 6.6 cubic metres will have attracted a
23 penalty of \$3.72, while cutting down a smaller volume
24 of balsam; i.e., 4.5 cubic metres will attract a
25 penalty that is approximately three times higher; is

1 that correct?

2 A. That's correct.

3 Q. Why has the Ministry tied the quantum
4 of the penalty to the value of the species?

5 MS. MURPHY: There is a Crown Timber Act
6 that does that, Mr. Chairman. The current situation
7 under the Crown Timber Act is that the penalty is
8 assessed based on the stumpage, and that is the
9 evidence.

10 MR. LINDGREN: My concern, Mr. Chairman,
11 is that the penalties are only applied with respect to
12 merchantable trees that may have been taken or cut and
13 it takes no account of the habitat value or the
14 aesthetic value of the trees that were taken.

15 THE CHAIRMAN: But as we understand it,
16 Mr. Lindgren, it's a result of the way the statute is
17 formulated and the regulations enacted under that
18 statute.

19 Now, you may argue that that is
20 inappropriate, you may argue that there should be
21 another method of assessing penalties and another rate
22 structure, if there is fines imposed, or other
23 penalties other than fines. But that is a matter of
24 recommendations which may be put forward by MNR in an
25 amendment procedure to the Act or anybody else, and

1 then it has to go through the normal amendment
2 procedure for any Act of the Legislature and/or
3 regulation.

4 MR. LINDGREN: That's correct.

5 Q. And my question to Mr. Cary is: Is
6 the Ministry contemplating recommending such an
7 amendment?

8 MS. MURPHY: Yes, that is the evidence.

9 MR. LINDGREN: Well, we will return to
10 the Crown Timber Act in a moment.

11 MR. MARTEL: Can I ask a question then.
12 Mr. Cary, I think you just told me a few moments ago
13 that you were trying to move away from this process to
14 one of a system of fines based on the severity of the
15 charges laid; is that not right, you're moving away
16 from --

17 MR. CARY: That's right.

18 MR. MARTEL: You are moving away from
19 this sort of thing which leads to all kinds of
20 discrepancies?

21 MR. CARY: Well, we are moving away from
22 this particular system, Mr. Martel.

23 MR. MARTEL: Right. So the question
24 becomes almost redundant because Ministry has
25 recommended a totally new procedure.

1 MR. CARY: That's correct.

2 MS. MURPHY: That's right.

3 MR. LINDGREN: Well, I will attempt to
4 examine some of the recommendations that the Ministry
5 is in fact making here.

6 Q. For example, Mr. Cary, you have
7 indicated that this penalty section will be replaced by
8 an offence section of some sort; is that correct?

9 MR. CARY: A. It will be replaced by an
10 offences section.

11 Q. Offences section. Are you telling
12 me, Mr. Cary, that there will be specific offences
13 enumerated in that provision, or will there simply be a
14 general prohibition against operations that are carried
15 out except in accordance with approved timber
16 management plans?

17 MS. MURPHY: Mr. Cary can probably give
18 the information that was contained in the document that
19 we provided to everyone, the Crown Timber Act, and the
20 amendments, the document that described the situation,
21 that is Exhibit 919. My friend is asking what it will
22 say in the end. Mr. Cary can't tell that, of course,
23 because it's a matter before Legislature.

24 THE CHAIRMAN: All right. Well, let's
25 look at 919, Mr. Lindgren, and base your questions on

1 that, if those are the proposed amendments.

2 MR. LINDGREN: Mr. Chairman, my concern
3 with Exhibit 919 is this: We have approximately 10
4 pages of description of the Act as it now exists and
5 only two brief pages on what the amendments are, and we
6 are concerned about that.

7 Now, we appreciate the fact that the
8 draft Bill has not been introduced at this time, but we
9 would certainly like some clarification or the amount
10 of clarification that Mr. Cary is prepared to give on
11 the proposed amendments.

12 MS. MURPHY: What is the question?

13 THE CHAIRMAN: Well, ask him the
14 questions. He's here to give that clarification.

15 MR. LINDGREN: That's right, sir.

16 Q. Now, Mr. Cary, getting back to my
17 question a moment ago that the Ministry is apparently
18 doing away with the penalty provision. Now, is the
19 Ministry recommending that the court be given the power
20 to impose a fine based on stumpage fee; i.e., one to
21 five times?

22 MR. CARY: A. No, it's not.

23 Q. Okay.

24 A. It's moving away from that.

25 Q. That was not clear in you evidence

1 and that is why I sought clarification.

2 THE CHAIRMAN: Well, he just stated that
3 a couple of times. I don't know why it wasn't clear.

4 MR. CARY: Twice.

5 MR. LINDGREN: Well, perhaps the
6 misunderstanding is my own, sir.

7 Mr. Cary indicated that the penalty
8 section that now exists will be replaced. My question
9 was: Will the court be authorized to impose a fine
10 that is analogous to the situation now, and I think his
11 answer is no.

12 MR. CARY: My answer is no.

13 MR. LINDGREN: Q. So the court will not
14 be empowered to impose a fine of five times stumpage
15 for example?

16 MR. CARY: A. We are moving away from
17 the value of wood and the fines will be based on the
18 severity of the offence.

19 Q. There are a few other questions that
20 I have about this matter, Mr. Cary. You said that it
21 will be an offence -- or the Ministry's recommended
22 than an offence be established that would prohibit the
23 carrying out of timber management operations except in
24 accordance with approved timber management plans.

25 And I'm wondering if this includes timber

1 management operations carried out pursuant to a
2 contingency plan?

3 A. Yes, it does.

4 Q. Okay, thank you. That was not clear
5 as well.

6 Now, with respect to the offence section,
7 is the MNR considering or recommending implementing a
8 ticketing system that would allow its field officers to
9 issue tickets for offences under the Crown Timber Act?

10 A. I can't answer that question, I don't
11 know.

12 THE CHAIRMAN: Well, there is an
13 indication that whatever the offences are they are
14 going to be in force by way of the Provincial Offences
15 Act.

16 MR. LINDGREN: That's right, and at first
17 instance that normally would entail the laying of an
18 information under the Provincial Offences Act.

19 THE CHAIRMAN: Well, obviously certainly
20 it would.

21 MR. LINDGREN: But certain procedural
22 mechanisms have to be in place to allow for a ticketing
23 system under the Provincial Offences Act, you just
24 don't issue tickets. And that is why I was interested
25 in asking whether or not the Ministry was recommending

1 that a ticketing system be implemented for all field
2 staff to issue tickets in the field.

3 THE CHAIRMAN: Well, I would suggest you
4 are probably going to have that kind of question more
5 properly dealt with by the legal department of either
6 the Ministry or the Attorney General's Department
7 simply because once it comes under the Provincial
8 Offences Act I think they get involved.

9 MR. LINDGREN: That is fair, sir.

10 Q. Returning to your evidence, Mr. Cary,
11 you have indicated that maximum fines will be
12 established for these offences.

13 Are you in a position to advise me as to
14 the approximate range of these maximum penalties or for
15 which specific offences maximum penalties will be
16 established?

17 MR. CARY: A. No, I'm not.

18 Q. Are you aware if minimum fines will
19 be established for certain offences?

20 A. The whole proposal is in the hands of
21 Legislature drafters and I can't comment on that. I
22 don't know what will be the final outcome of that
23 process.

24 Q. The question was: Has the Ministry
25 recommended? Well, maybe perhaps I didn't make that

1 clear. Has the Ministry recommended that minimum fines
2 be established for certain offences?

3 A. Yes.

4 Q. Thank you. Now, perhaps returning to
5 Document 954, page 10. In paragraph No. 4 it is
6 provided that:

7 "In recommending a penalty, some
8 consideration ought to be given to
9 eliminating or reducing any margin for
10 profit that may be involved."

11 Now, granted that this penalty system
12 will soon be replaced by an offence section, has the
13 Ministry recommended or proposed that the court be
14 empowered to impose a penalty that in effect strictly
15 removes profits that are generated by the commission of
16 the offence?

17 A. Could you repeat that question?

18 MS. MURPHY: If this is being dealt with
19 under the Provincial Offences Act, I would assume that
20 the Crown Attorney would apply the normal criteria that
21 would be used in a criminal case to recommend sentence,
22 I would assume.

23 THE CHAIRMAN: Well, not necessarily, Ms.
24 Murphy. There has been recent changes to legislation
25 whereby for certain illegal actions profits are removed

1 or taken back. I mean, certainly the Criminal Code
2 provisions with respect to drug offences, for instance,
3 springs to mind. So it is quite possible that this is
4 within the realm of the Provincial Offences Act if it
5 is stated by way of a section or something like that.

6 MS. MURPHY: My point is simply this: It
7 may well be within current sentencing practices in the
8 appropriate circumstances, that would be a matter for
9 the Crown Attorney, as I understand it.

10 THE CHAIRMAN: No, but I think the
11 Ministry, if they thought that this would be an
12 appropriate deterrent for such action, it is certainly
13 within their power to recommend that such a provision
14 be included.

15 MR. LINDGREN: Mr. Chairman, another
16 example that springs to mind is the recent amendment to
17 the Environmental Protection Act that gives the court
18 that specific power.

19 Q. And my question, Mr. Cary: Has the
20 Ministry recommended that the court under the Crown
21 Timber Act be given that power?

22 MR. CARY: A. I'm not aware of any
23 recommendation along those lines, no.

24 Q. One final question on the proposed
25 amendments, Mr. Cary. If I recall your testimony

1 correctly, you have indicated that the Minister will be
2 given the power to make a restoration order where an
3 offence has been committed or where the Crown Timber
4 Act has been violated?

5 A. To take remedial action.

6 Q. To take remedial action. Does that
7 include making an order that the environment be
8 restored?

9 A. It's our recommendation that the
10 Minister be empowered to take remedial action and that
11 remedial action will differ from situation to
12 situation, but environmental concerns obviously will be
13 paramount there.

14 Q. And I take it that the Ministry has
15 recommended that the Minister be so empowered without
16 the necessity of going to court, he can do that without
17 going to court?

18 A. That's my understanding, yes.

19 THE CHAIRMAN: I am not sure, Ms.
20 Seaborn, perhaps you could assist.

21 The Minister of the Environment would,
22 under his legislation, also have the power to step in
23 and execute a stop order or something like that if he
24 found an environmental practice to be such that it
25 warranted such action. Is that not possible?

1 MS. SEABORN: Mr. Chairman, it is my
2 understanding that those persons within the Ministry of
3 the Environment that are designated provincial officers
4 can always lay charges under the legislation that the
5 Minister of the Environment administers. And that
6 would apply to the provisions of the Environmental
7 Assessment Act.

8 MR. LINDGREN: Q. One final question on
9 that matter, Mr. Cary. The Minister has been
10 empowered, at least in the Ministry's recommendation,
11 to impose an order that would in fact require remedial
12 action. Has the Ministry recommended that the court be
13 so empowered to make such a remedial or restoration
14 order on its own motion or upon the motion of the
15 prosecutor?

16 MR. CARY: A. I don't know. I'd have
17 to -- I can't answer that question.

18 Q. Very well.

19 THE CHAIRMAN: Just as a matter of
20 interest as well - Ms. Murphy, perhaps you could
21 assist - are the employees or provincial officers or
22 whatever you call them in terms of the Ministry of
23 Natural Resources also responsible for the prosecution
24 or is it left to a Crown prosecutor?

25 MS. MURPHY: Well, at the end of the

1 document that we've provided, has indicated that when
2 the legislation is amended the regulation would have to
3 be amended to bring this into line.

4 Right now - just a minute, what are they
5 called, conservation officers - I keep wanting to call
6 them correctional officers because of my jail work -
7 conservation officers have certain authorities to lay
8 information and so forth and then, of course, it goes
9 to the Crown Attorney. I assume that is --

10 THE CHAIRMAN: Okay. But my question is:
11 They don't carry forth the prosecution in court?

12 MS. MURPHY: No. In the normal course,
13 no, that's done by the Crown Attorney and I believe
14 also the Legal Services Branch from the various
15 ministries from time to time have experts in legal
16 services that would undertake that from time to time as
17 well.

18 THE CHAIRMAN: Because that's the area
19 where often when you have that situation--

20 MS. MURPHY: That's right.

21 THE CHAIRMAN: --the offences can be
22 dealt with in accordance with the mandate under which
23 they occurred, if I might put it that way. So that if
24 a remedial measure were requested, it is more likely to
25 be requested by an officer of the Ministry under which

1 the offence or legislation occurred to be requesting
2 that kind of thing, rather than a Crown Attorney that
3 handles the criminal jurisdiction or quasi-criminal
4 jurisdiction in general.

5 MS. MURPHY: Oh yes. And my
6 understanding is that in that kind of situation what
7 would normally happen is that the responsible employee
8 from the Ministry would be there to act as a witness
9 rather than a prosecutor, right.

10 THE CHAIRMAN: Okay. It is the same
11 idea.

12 MS. SEABORN: Mr. Chairman, just if I
13 could assist. It is my understanding that certainly a
14 large part of the Legal Services Branch at the Ministry
15 of the Environment has spent doing prosecutions for the
16 legislation that that Minister administers and, as Ms.
17 Murphy pointed out, the designated provincial officer
18 who is an employee of the Ministry would be there to
19 explain why he or she laid the charges and to act as a
20 witness.

21 THE CHAIRMAN: And also to suggest what
22 kind of remedial action or penalties might be
23 appropriate to ask the court to impose.

24 MS. SEABORN: That could very well be
25 part of it. And, again, the solicitor with legal

1 services may very well have that recommendation as well
2 after speaking with his or her officials.

3 MR. CASSIDY: It may even have some
4 federal involvement in the Fisheries Act as well, Mr.
5 Chairman.

6 THE CHAIRMAN: That's right.

7 MR. CASSIDY: I would just seriously ask
8 Ms. Murphy what work she did in jail.

9 MR. LINDGREN: Q. Mr. Cary, can I ask
10 you to turn to Exhibit 950, please. This is the
11 document entitled: Summary of Infractions, 1969 to
12 '87, Latchford Timber Management Unit.

13 MR. CARY: A. I have that.

14 Q. Can you confirm for me, Mr. Cary,
15 that this list contains some 35 infractions that
16 attracted various penalties ranging from a penalty of
17 \$36.95 for a 1985 reserve trespass, this is found at
18 page 3 of the document, that's the low end of the
19 range, and the high end of the range is a fine for --
20 or a penalty of \$4,464.18, this is found towards the
21 bottom of page No. 2. Can you confirm that?

22 A. Yes, I can confirm that.

23 Q. Now, when I reviewed this procedure
24 document, Exhibit 954, I could find no special guidance
25 to managers as to when to impose penalties for reserve

1 trespasses or if penalties aren't to be imposed what
2 the quantum of that penalty should be.

3 So I take it, Mr. Cary, that a reserve
4 trespass is simply assessed as a normal unauthorized
5 cut if wood is taken?

6 A. That's correct.

7 Q. So, therefore, this penalty does not
8 take into account the potential or actual effects on
9 the resource values that the reserve was intended to
10 protect?

11 A. Well, it is an unauthorized cut and
12 that's how the legislation is set out. So if you cut
13 in an area that's not authorized for cutting, the
14 legislation says this is the system that we use.

15 Q. Okay, thank you. Now, looking at the
16 bottom of page 1 of Exhibit 950, we see a reference to
17 an unauthorized crossing and I presume that this
18 resulted in a charge being laid under the Lakes and
19 Rivers Improvement Act and there is an indication that
20 that resulted in \$150 court fine.

21 Mr. Cary, can you advise me if this is in
22 fact the one charge under the Lakes and Rivers
23 Improvement Act that we saw in Ms. Murphy's letter
24 dated March 13th, 1989?

25 A. No, I cannot advise you that this is

1 the charge.

2 Q. Okay, thank you. Now, earlier this
3 morning Ms. Murphy indicated that there is a policy
4 document of some sort that speaks to approval
5 procedures under the Lakes and Rivers Improvement Act.
6 It there a policy document that speaks to the
7 enforcement of that legislation?

8 MS. MURPHY: I advised this morning, I
9 believe, that there is a policy document that told you
10 when the Lakes and Rivers Improvement Act applied and
11 how to apply it, this is already an exhibit, and that
12 we do not have any further policies at the provincial
13 level with respect to that legislation.

14 The letter in the document refers to a
15 number of these related policies about how to do this
16 job.

17 MR. LINDGREN: Q. Mr. Cary, are you
18 familiar with this document?

19 MR. CARY: A. No, I'm not.

20 MR. LINDGREN: My concern here, Ms.
21 Murphy - and I am not familiar with that document
22 myself because I haven't read it recently - can you
23 perhaps indicate or undertake to indicate whether or
24 not this provides any guidance to the enforcement or
25 the enforcement actions that may be taken under the

1 Lakes and Rivers Improvement Act?

2 It seems to me it is simply a document
3 that governs application for approvals to construct
4 water crossings, it does not provide any guidance in
5 terms of the investigation and/or laying of charges
6 under that legislation.

7 THE CHAIRMAN: Well, is there an index to
8 that document?

9 MS. MURPHY: Yes. My friend can have a
10 look at this document. It does not tell the officer
11 how to lay a charge under the Lakes and Rivers
12 Improvement Act.

13 THE CHAIRMAN: And it doesn't give any
14 direction with respect to the imposition of penalties
15 other than stating what --

16 MS. MURPHY: No, because of these
17 penalties -- the Lakes and Rivers Improvement Act does
18 not result in penalties in the sense of the Crown
19 Timber Act, it results in court action or in fact, I
20 would suggest, in the normal case it results in
21 locating an area where someone is doing something
22 without approval, and I would suggest to you that in
23 the normal case what happens is the person is advised
24 that they need an approval and the rest of this would
25 kick in.

1 THE CHAIRMAN: I see.

2 MR. LINDGREN: I think then, Mr.

3 Chairman, the answer to my question is perhaps this:

4 There are no policies or documents that govern as to

5 whether or not charges should be laid under the

6 legislation.

7 THE CHAIRMAN: That appears to be the

8 case.

9 MR. LINDGREN: Q. Is that the case, Mr.

10 Cary?

11 MR. CARY: A. Well, that's what I

12 understand from the last conversation, but I am not

13 aware of that, I haven't read that document.

14 Q. Assuming that is the case, Mr. Cary,

15 there are no policies or documents that govern the --

16 that assist the Ministry field staff in determining

17 whether or not a charge should be laid. In your view,

18 what circumstances would lead field staff to lay a

19 charge under that Act?

20 A. I'm really not qualified to speak

21 about the circumstances or anything to do with the Lake

22 and Rivers Improvement Act, I'm sorry.

23 MR. STRAIGHT: A. I may be able to help

24 you a little bit, Mr. Lindgren. In terms of whether or

25 not there are great -- first of all, I guess in terms

1 of direction, you should recognize that our primary --
2 the personnel who are primarily involved in enforcing
3 Acts other than the Crown Timber Act are the
4 conservation officers, which Ms. Murphy referred to.

5 They are subject to fairly extensive
6 training in terms of the meaning of legislation, its
7 intent, the intent of the legislation, how to lay a
8 charge, courtroom procedure, all of the necessary items
9 that go into actually laying a charge and taking it
10 through the court system.

11 They would first -- obviously, in a
12 normal course of events you have to recognize that
13 legislation is a tool of management, that's its primary
14 purpose, it is not the only one.

15 In terms of the Lakes and Rivers
16 Improvement Act, you have to look at the objective of
17 the Act itself and its purpose and if we are talking
18 about relative to water crossings, its actions are
19 reviewed relative to potential impacts on fisheries,
20 potential impacts on other riparian owners, potential
21 upstream and downstream effects that may affect other
22 uses or users in the area.

23 So there is a great, usually a great deal
24 of thought and effort that goes behind whether or not
25 you would lay a charge in any instance starting, first

1 of all, with whether or not you have the necessary
2 evidence to take that particular case through the
3 courts and get a successful conviction. And quite
4 often that would undertake -- may undertake a
5 significant amount of time and a significant amount of
6 investigation and the recording of all of the events
7 surrounding the particular incident.

8 You may -- in the sense we also use, you
9 know, in our policies of enforcement, it's not always a
10 mandatory issue, we don't always go out and charge. It
11 may well be that persuasion and cooperation in the long
12 run with a particular individual will reinforce the
13 need for management or the purpose of justice in the
14 long run more so than the laying of a charge.

15 There may be instances beyond the
16 operator's control that make it unwise in a particular
17 instance to lay a charge even though potentially it
18 would appear that there might be one there.

19 There are a great many things that enter
20 into it, without continuing on.

21 Q. I am aware of that, Mr. Straight, and
22 I thank you for your answer. You may recall yesterday
23 that we did discuss Exhibit 327 which is a document
24 that provides some assistance in those kinds of matters
25 to officers with respect to charges under the Fisheries

1 Act. And I am wondering why the Ministry has not
2 produced a similar document for enforcement of the
3 Lakes and Rivers Improvement Act?

4 A. Well, I guess primarily because to
5 this point in time we haven't felt it has been
6 necessary, that the training that our officers receive
7 is sufficient in terms of providing them with
8 instructions on when and how to lay charges, that we
9 expect our district managers and district staff to
10 exercise judgment in how they go about managing
11 resources using enforcement as a tool.

12 Q. Thank you. Now, Mr. Cary, perhaps I
13 can return to you and ask you to turn to page -- or
14 Exhibit 951 which is a summary of the warning letters,
15 1984 to '88 on the Temagami Crown Management Unit.

16 Firstly, just looking at --

17 A. May I ask you a question?

18 Q. Certainly.

19 A. Who made this summary? I just want
20 to be absolutely clear.

21 Q. That is a summary that was prepared
22 by an employee of the Temagami District Office.

23 A. By an employee of the Temagami
24 District Office. Ministry of Natural Resources?

25 Q. That's correct.

1 A. Thank you.

2 Q. Now, just looking at the first page
3 of this exhibit, Mr. Cary, can you simply confirm for
4 me that this document lists 24 warning letters that
5 were issued during 1984 to 1988?

6 A. Yes, I can confirm that.

7 Q. Thank you. Now, it is not my
8 intention to go through all 24 warning letters and in
9 fact I have absolutely no need to do so.

10 However, there appears to be certain
11 matters here that are not addressed by the procedures
12 under the Crown Timber Act that we've just examined in
13 relation to Exhibit 954 and, for example, if I ask you
14 to turn to the third page of this document, there is a
15 reference to a March, 1984 letter, or at least a
16 discussion that was held with respect to seed trees.

17 There is an indication that there were
18 seed trees that were apparently taken or damaged and
19 other seed trees were either poorly selected or not
20 being left in sufficient numbers.

21 Now, the action taken by the Ministry
22 basically was to stress the importance of better
23 supervision of cutting gangs. Now, given that seed
24 trees are involved, could these infractions have
25 attracted penalties under the Crown Timber Act?

1 Now, certainly the taking of a seed tree
2 would certainly attract a penalty, but what about the
3 matter such as poor selection of seed trees and
4 insufficient number of seed trees, that would not
5 prompt a penalty under the Crown Timber Act; correct?

6 A. Yes, I believe you are correct on the
7 poor choice of seed trees.

8 Q. Are there in fact any charges that
9 the Ministry could lay with respect to this matter, or
10 is the Ministry simply restricted to issuing a warning?

11 A. Specifically the poor choice of seed
12 trees?

13 Q. That's right.

14 A. I don't think that's an offence under
15 the Crown Timber Act.

16 Q. Would you agree with me that there
17 are important long-term implications with respect to
18 the poor choice of seed trees or leaving inadequate
19 number of seed trees?

20 MS. MURPHY: This is one of those
21 situations you have a summary, you don't know the
22 background.

23 MR. LINDGREN: I am speaking generally,
24 Mr. Chairman.

25 THE CHAIRMAN: Well, okay. You can speak

1 generally, but I would suggest that it might be awfully
2 difficult to lay charges, particularly if they were
3 charges that went to court on poor choice of
4 something -- the exercise of poor choice on the part of
5 somebody, it would be awfully difficult to prove that
6 kind of state of mind that might be necessary to
7 support a conviction under the Provincial Offences Act.

8 Would you not agree, Mr. Lindgren?

9 MR. LINDGREN: That may well be true.
10 There are, however, other indications that inadequate
11 numbers of seed trees were left. That surely is an
12 objective assessment perhaps that could be scrutinized
13 by the court.

14 MR. CASSIDY: Perhaps we are at the point
15 where we require expert evidence on the part of the
16 prosecution and it could very easily be refuted by a
17 defence expert. I mean, that burden of proof of course
18 is beyond a reasonable doubt.

19 THE CHAIRMAN: See, it may well be that
20 that are certain categories of offences that have been
21 specifically left out of the legislation because the
22 degree of proof and the burden of proof on the
23 prosecutor would be such that convictions would be
24 extremely rare and probably it wouldn't be worth the
25 effort to carry it through the court system, and that's

1 those offences which deal with matters of judgment on
2 the part of operators as opposed to taking something in
3 an unauthorized way; for instance, without a licence or
4 something like that.

5 MR. LINDGREN: Q. Perhaps my concern can
6 be illustrated by the following question, Mr. Cary.

7 In light of the silvicultural importance
8 of seed trees, has the Ministry recommended that the
9 Crown Timber Act be amended to expressly prohibit the
10 taking of seed trees and/or has the Ministry
11 recommended that specific or special penalties be
12 imposed for that situation?

13 MR. CARY: A. We haven't spoken to that
14 specific situation in the proposed recommendations,
15 but, remember, operations must conform to an approved
16 timber management plan and contravention of the
17 conditions of that approved plan is an offence and we
18 can do something about it.

19 Q. Thank you. Can I ask you to turn to
20 page 5 of this document. This refers to a July, 1984
21 incident in which a cutting gang apparently pushed a
22 skidder trail through a 60-metre modified management
23 area surrounding Lake "A" and that prompted a letter to
24 the company from the MNR notifying the company that the
25 MNR must be notified prior to operations within the

1 MMA.

2 Now, assuming no merchantable trees were
3 damaged or taken here -- do you have that paragraph,
4 Mr. Cary?

5 A. Yes, I do.

6 Q. Assuming no merchantable trees were
7 damaged or lost in this situation, Mr. Cary, would you
8 agree with me that no penalties could currently be
9 imposed under the Crown Timber Act for this activity?

10 A. It would depend on the prescription
11 in the modified management area. I simply can't
12 comment on that specifically.

13 Q. The hypothetical, Mr. Cary, is this:
14 Assuming no merchantable trees were taken or damaged,
15 could the Ministry impose a penalty under the Crown
16 Timber Act?

17 A. Well, that may be just one part of
18 the -- all I am saying is, if there was an expressed
19 prohibition about access or skidding in that area, we
20 might have been able to do something, and I can't speak
21 to the exact prescription on that modified management
22 area.

23 Q. Has the Ministry recommended that the
24 Crown Timber Act be specifically amended to prohibit
25 this kind of activity?

1 A. As I said before, if there is a
2 prescription and it is part of the timber management
3 plan, part of the annual work schedule, and there is
4 contravention of those conditions, then we can take
5 action.

6 Q. So I believe that your answer is no
7 to my question?

8 MS. MURPHY: No, I believe the answer is
9 yes.

10 MR. CARY: Yes.

11 MS. MURPHY: The question was: Are you
12 talking about doing anything to deal with these
13 situations and the answer is --

14 MR. LINDGREN: No, but Mr. Chairman, in
15 fairness, the question was simply: Has the Ministry
16 recommended that the Crown Timber Act be specifically
17 amended to prohibit this kind of activity within
18 reserves?

19 MS. MURPHY: Skidding within reserves,
20 when you don't have approval?

21 MR. CARY: If the prescription says no
22 skidding within reserves and there is skidding within
23 reserves, then we can take action.

24 MR. LINDGREN: That's not the question.

25 THE CHAIRMAN: It is our understanding,

1 correct the Board if it is wrong, is it not the case
2 that there is enforcement of unauthorized activity that
3 is done in contravention of a timber management plan?

4 MR. CARY: That's correct, Mr. Chairman.

5 THE CHAIRMAN: So that if you have a
6 timber management plan that contains various
7 silvicultural prescriptions to it, if you breach the
8 silvicultural prescriptions you have breached the plan,
9 you are doing something in an unauthorized fashion
10 because the timber management plan authorizes you to
11 carry out activity in accordance with the plan and,
12 consequently, you can then take action under the Crown
13 Timber Act; is that not the case?

14 MR. CARY: Yes, Mr. Chairman.

15 THE CHAIRMAN: So it is covered if there
16 is a prescription; if there is a prescription, you
17 breach the prescription, you are under the Crown Timber
18 Act.

19 There doesn't have to be a specific
20 provision of the Act to deal with unauthorized skidding
21 which is why they haven't probably recommended it. It
22 is covered as a catchall in terms of breaching any
23 silvicultural prescriptions in accordance with an
24 approved plan.

25 MR. LINDGREN: My question was simply

1 this, sir: Is there a specific provision that is
2 contemplated or recommended by the Ministry that would
3 expressly protect reserves or that directly speaks to
4 reserves, and that the answer is no because it is
5 already dealt with.

6 THE CHAIRMAN: No, it is protected by way
7 of the prescriptions pursuant to an improved plan.
8 That's the way they go about protecting all kinds of
9 values out there, through prescriptions. I believe
10 that's the evidence that is before us.

11 MR. LINDGREN: That is the evidence, but
12 the latter part of that evidence was not clear until I
13 posed the question. I was not aware as to whether or
14 not the Ministry had recommended that specific offence
15 sections be enacted with respect to reserves and the
16 answer --

17 THE CHAIRMAN: No, because it is covered
18 under the normal prescriptions pursuant to any timber
19 management plan.

20 MR. LINDGREN: The answer is no and
21 that's the reasoning?

22 THE CHAIRMAN: And that's the reasoning,
23 as we understand it.

24 MR. GORDON: Mr. Chairman, if I can be
25 helpful. If you look at the current Crown Timber Act

1 and you turn to Section 26, part 4, it says there:

2 "The licensee shall conduct all
3 operations on his licensed area in
4 accordance with the approved management
5 plan or operating plan as the case may
6 be."

7 And if you turn to Section 31:

8 "Where a licensee contravenes any
9 provisions of Sections 26 to 30 or any
10 order of the Minister made thereunder,
11 the Minister may suspend the operation
12 of the licence in whole or part for a
13 period not exceeding six months."

14 So in the current legislation we have
15 controls that are fairly straightforward.

16 MR. LINDGREN: Q. I thank you for
17 pointing those sections out, Mr. Gordon, but, as I read
18 them, and as the Crown Timber Act now currently exists,
19 where a licensee contravenes that prescription that
20 contravention will not attract a penalty unless it
21 involves merchantable timber and, more importantly, it
22 cannot be prosecuted as an offence unless and until Mr.
23 Cary's amendments have been processed?

24 MR. GORDON: A. I am not a lawyer, but
25 basically I think what it says, if you go against the

1 management plan, the Minister can make the decision to
2 suspend your operations for up to six months. And
3 that's what it says and I can't say anything further
4 than that.

5 Q. Mr. Cary, can I ask you to turn to
6 Exhibit 952.

7 MR. CARY: A. And a similar question,
8 Mr. Lindgren. Who developed this? What I see is a
9 list of MNR letters or memos.

10 Q. The very same person that I indicated
11 earlier.

12 A. Thank you.

13 Q. Now, looking under the paragraph
14 entitled 1987, this is found on the first page, four
15 items down there is reference to a charge under the
16 Lakes and Rivers Improvement Act with respect to
17 improper culverts and silting of stream.

18 Are you in a position, Mr. Cary, to
19 advise me if this is the one charge under the Lakes and
20 Rivers Improvement Act referred to in Ms. Murphy's
21 letter?

22 A. No, I'm not.

23 Q. Now, looking at the first item in
24 1987 and looking at the only item above that in 1988,
25 there is reference to the use of a logging camp for

1 other purposes. Now, I am not asking for particulars
2 on those situations, but what statutory authority here
3 would the Ministry be relying upon? Is there a
4 requirement that an operator use a logging camp for
5 certain specified purposes?

6 A. I believe that's the Public Lands
7 Act.

8 Q. And it is possible to lay a charge
9 under the Public Lands Act for this activity?

10 A. That's correct.

11 Q. Has the Ministry prepared any
12 document or guideline or policy to provide any guidance
13 in terms of laying charges for this kind of situation?

14 A. I don't know the answer to that
15 question.

16 Q. On the third page of this document,
17 Mr. Cary, there is reference to a number of gate
18 infractions and we find this again on page No. 4, a
19 number of gate infractions. I assume this is an
20 infraction under the Public Lands Act as well?

21 A. That seems that way. Is it the same
22 infraction that's shown on the first page?

23 Q. Use of a logging camp. Well, my
24 question is simply this: I take it that it is possible
25 to charge under the Public Lands Act for gate

1 infractions?

2 A. What do you mean by gate infractions?

3 Q. Well, perhaps you can explain it to
4 me. You just indicated that it is possible for the
5 Ministry to -- I think this is the evidence of the
6 Ministry, that it is possible for the Ministry to
7 impose certain restrictions on access roads?

8 A. On the use of roads, yes.

9 Q. On the use of roads and it may in
10 fact require gates to be locked--

11 A. Yes, it could be, yes.

12 Q. --for a period of time. Now, if that
13 direction is contravened, I assume that could well be
14 an infraction of the Public Lands Act?

15 A. That's my understanding.

16 Q. And, therefore, it is possible to lay
17 a charge with respect to those incidents?

18 A. Yes, that's my understanding.

19 Q. And, again, has the Ministry prepared
20 any particular policies or directives speaking to that
21 particular matter; namely, gate infractions?

22 A. I don't know.

23 THE CHAIRMAN: Mr. Lindgren, we want to
24 find a time to take a break. How long are you going to
25 be?

1 MR. LINDGREN: 30 minutes more, Mr.
2 Chairman. This would be a convenient time. I am
3 moving into a different area.

4 THE CHAIRMAN: All right. We will take a
5 break for 15 minutes.

6 MR. LINDGREN: Thank you.

7 ---Recess taken at 9:35 a.m.

8 ---On resuming at 9:55 a.m.

9 THE CHAIRMAN: Thank you. Be seated,
10 please.

11 MR. LINDGREN: Q. Mr. Cary, in your
12 evidence there is reference to the compliance
13 monitoring that's carried out with respect to the
14 construction of access roads.

15 Can I ask you to turn to Exhibit 928A.
16 These are the FFT interrogatories filed by the
17 Ministry. Could I ask you to turn to Question No. 30,
18 please.

19 Now very quickly, Mr. Cary, the question
20 posed asks for a list of the occurrences in which the
21 location of an access road did not conform with the
22 planned location and the Ministry's answer suggests
23 that the Ministry was prepared to canvass districts
24 that had plans prepared under the 1986 Timber
25 Management Planning Manual, and subsequent to that

1 answer we did receive a supplementary answer and this
2 is found on the following page. This is a list of
3 seven recent occurrences where roads went outside the
4 planned locations.

5 Now, Mr. Cary, can you confirm for me
6 that most of these occurrences appear to have resulted
7 in warnings or letters to the companies involved; is
8 that correct? I am looking at the right-hand column
9 entitled: Action Taken. There's surely no charges
10 under the Lakes and Rivers Improvement Act listed here.

11 MR. CARY: A. I believe Mr. Gordon was
12 involved in the preparation of this answer, so I would
13 like to hand the table to him.

14 Q. Very well.

15 MR. GORDON: A. For your information, I
16 was the one that canvassed the districts directly and I
17 put together this summary table. Could you again
18 please repeat your question?

19 Q. The question was simply this: Can
20 you confirm that the action taken by the Ministry in
21 all of these occurrences amounted to written or verbal
22 warnings to the companies involved, there are no
23 charges under the Lakes and Rivers Improvement Act?

24 A. That's correct. In the case of the
25 fifth one on the list, as well for the portion of the

1 road that was outside the road corridor, no FMA road
2 funding was provided to the company in question.

3 Q. Thank you. I am interested in the
4 situation above that for the Romeo Malette Forest,
5 there is an indication that the road crossed the creek,
6 or a creek 400 metres from the planned location. Can
7 you confirm for me that all water crossings are
8 considered to be areas of concern?

9 A. I can't think of any that are not.

10 Q. I believe the evidence of Panel 15
11 was in fact that all water crossings are regarded as
12 areas of concern?

13 A. I can agree with that.

14 Q. Now, next to that statement we find
15 an assessment of the significance and the Ministry
16 apparently determined that no detrimental effects were
17 caused. Now, my question here is: Who made this
18 determination?

19 A. It would be field staff within the
20 district under the direction of the district manager.

21 Q. Would this normally be done in
22 conjunction with Ministry of the Environment staff?

23 A. No, it would not normally be done in
24 conjunction with MOE.

25 Q. One final question on this page, Mr.

1 Gordon. Is it the Ministry's position that these are
2 the only examples of roads built under the new timber
3 management planning process that have strayed from the
4 original planned location without Ministry approval?

5 A. Yes, that was the intent of myself
6 canvassing the districts in the area of the
7 undertaking.

8 Q. Thank you. Mr. Cary, can I return to
9 you. In your evidence you referred to operational
10 audits that are periodically carried out and then you
11 also referred to special external audits that are
12 carried out from time to time and you've referred to
13 the Baskerville Audit and the Provincial Auditor's
14 Report; is that correct?

15 MR. CARY: A. That's correct.

16 Q. Are you familiar with a document
17 that's commonly referred to as the Kayll Report,
18 K-a-y-l-l?

19 A. That's Professor Kayll of Lakehead
20 University?

21 Q. Correct.

22 A. I'm not familiar with that report.

23 Q. Well, it is our understanding that
24 this was a report that was intended as a follow-up of
25 some sort to the Dean Baskerville Audit.

1 Can you advise me whether or not this was
2 a document that was prepared for or by the Ministry of
3 Natural Resources?

4 A. I'd have to look at the document, I
5 am sorry, I am just not familiar with it.

6 If it was written by Dr. Kayll, I think
7 he was a member of the faculty at Lakehead, but I don't
8 know why or if he was commissioned by somebody else to
9 write this. I'd have to have a look at it.

10 Q. Does any other member on the panel
11 have any information on this matter?

12 THE CHAIRMAN: Are you going to produce
13 the document?

14 MR. LINDGREN: We don't have it. We are
15 trying to determine what it is and where it is, and I
16 am wondering if Mr. Cary can undertake to enquire if
17 this in fact is a Ministry document.

18 MS. MURPHY: Why doesn't my friend talk
19 to me about this later and we can determine what it is
20 and --

21 MR. LINDGREN: Very well.

22 THE CHAIRMAN: Perhaps maybe you should
23 contact Dr. Kayll and ask him about it himself.

24 MR. LINDGREN: Q. Now, during Ms.
25 Cronk's cross-examination, Mr. Cary, she introduced

1 Exhibit 940 which is the report of the task force on
2 FMAs and I think this was described as an audit of some
3 sort, in loose terms, it is an audit of some sort of
4 the FMA process.

5 MR. CARY: A. Well, I said reviews,
6 evaluations occur from time to time and I mentioned
7 some examples of them and that is an example of an
8 evaluation, review or an audit or a program conducted
9 by some individuals.

10 Q. Now, during her cross-examination,
11 Ms. Cronk asked you some specific questions about a
12 couple of the recommendations in this FMA review, and I
13 would like to do the same.

14 A. Did Ms. Cronk ask me or Mr.
15 Tworzyanski?

16 Q. Was it Mr. Tworzyanski? Maybe my
17 memory is a little faulty here.

18 MR. TWORZYANSKI: A. I believe it was.
19 I also believe I indicated that this was not an audit,
20 I characterized it as a report of the operations of the
21 FMA program as seen through the eyes of a number of
22 company people and Ministry people. I believe it's
23 described that way in the report itself.

24 Q. Thank you. Do you have the report in
25 front of you, Mr. Tworzyanski?

1 A. Yes, as a matter of fact I do.

2 Q. Can I ask you to turn to page 17 of
3 this report.

4 MRS. KOVEN: Excuse me, what is the next
5 number, Mr. Lindgren?

6 MR. LINDGREN: It is Exhibit 940.

7 MR. TWORZYANSKI: I have page 17.

8 THE CHAIRMAN: Go ahead, I will catch up.

9 MR. LINDGREN: Thank you, Mr. Chairman.

10 Q. At page 17 there is an indication in
11 the middle of the paragraph that tentatively 13
12 agreement holders reported either inadequate stock
13 standards, MNR failure to meet the standards or both
14 and this position was apparently corroborated by
15 numerous MNR districts. And the problem is stated as
16 follows:

17 "The MNR has been unable to produce stock
18 meeting the standards which it has agreed
19 to do in the ground rules."

20 Does the Ministry agree that this in fact
21 has been a problem and, if so, has this problem had any
22 effect on the restocking of FMA lands or the ability of
23 these lands to reach free to grow status?

24 MR. TWORZYANSKI: A. Okay. You have a
25 number of questions there, I will deal with the first

1 one. Yes, the Ministry agrees that it has been a
2 problem to produce stock as described empirically in
3 the ground rules. The ground rules were intended to
4 describe stock in really a mathematical fashion which
5 at times, I understand, it's difficult to produce to
6 certain specifications be they weight, height or
7 certain ratios.

8 As to your second question as to whether
9 that has had an impact on the ability to reach free to
10 grow, I have a little difficulty in answering that
11 insofar as I don't know how far back the problem goes
12 and if it were a problem it wouldn't become apparent
13 until later on in the development of the tree through
14 its growth over, let's say, five to seven years.

15 And I haven't heard any -- or in my
16 experience I have not been made aware of any situations
17 where improper stock or stock that didn't meet the
18 standards was planted and then in fact did not proceed
19 to grow.

20 Q. Thank you. Can I ask you to then
21 turn to page 18 and 19 of this document.

22 A. I have page 18.

23 Q. At the bottom of the page a problem
24 is expressed in the following way:

25 "Management planning has become

1 excessively complex, time consuming and,
2 when applied solely by the book, of
3 limited value in the minds of some
4 agreement holders in the management of
5 the agreement area."

6 And at the top of page 19:

7 "It is fair to say too that some
8 agreement holders generally do not place
9 enough importance on their management
10 plans, sometimes placing no more effort
11 than necessary to meet the bare
12 requirements of the manual."

13 Now, this appears to me to be a current
14 concern or a contemporary concern and I am wondering
15 how the Ministry is attempting to address this problem?

16 A. It's a stated concern in terms of the
17 authors of the plan -- or, I am sorry, in terms of the
18 authors of this particular document and the Ministry
19 position is that the process as has been described and
20 is being described here to the Board is the minimum
21 requirements. And that's really all I can say. We
22 won't approve a plan that does not meet the minimum
23 requirements.

24 Q. And as long as the plan meets the
25 bare requirements of the manual it will be approved?

1 A. As long as the plan meets the
2 requirements of the manual it will be approved, that's
3 correct.

4 Q. Thank you. Now, further down on page
5 19, under Recommendation No. 8, there is a
6 recommendation that the TMPM, the manual be amended to
7 streamline the public consultation process among other
8 things.

9 Can you advise me what actions are
10 contemplated by the Ministry to implement this
11 recommendation if the Ministry does in fact plan to
12 implement this recommendation?

13 A. The Ministry does not plan to
14 streamline the public consultation process that's been
15 described in these hearings.

16 Perhaps by streamlining was meant the
17 approval process for certain amendments and that,
18 again, has been described in some detail by Panel 15.
19 The Ministry has a position, it has been stated.

20 Q. Well, we find reference to the plan
21 amendment process at the top of page 20 and there is a
22 recommendation that that amendment process be
23 streamlined. I understand that would be the plan
24 amendment process as currently set out in the Timber
25 Management Planning Manual. Is this a recommendation

1 that the Ministry intends to carry out?

2 A. Again, the Ministry intends to stand
3 by what's been described in Panel 15 and at other
4 points in the hearing.

5 THE CHAIRMAN: Is basically, Mr.
6 Tworzyanski, a catchall answer to these questions being
7 posed, that what you put before the Board in terms of
8 the planning process is what the Ministry is going to
9 rely on and, to the extent this process answers any of
10 these recommendations, that's what it is, and that you
11 don't intend to go beyond what you put forward to the
12 Board in terms of your application?

13 MR. TWORZYANSKI: That's absolutely
14 correct, Mr. Chairman.

15 MR. LINDGREN: One general question
16 arises from that, Mr. Chairman.

17 Q. Is the Ministry intending to
18 implement any of the recommendations found in Exhibit
19 940?

20 MS. MURPHY: My difficulty is -- I mean,
21 first of all, as I had mentioned yesterday or first day
22 when this first came up, the document, as I understand
23 it, deals with a number of administrative matters and
24 so forth. There is a large number of recommendations,
25 I am not sure that it is going to help unless we go

1 through all of them, Mr. Chairman.

2 THE CHAIRMAN: In any event, to the
3 extent that the Ministry is going to address any of
4 these recommendations, would it be your position, Ms.
5 Murphy, that you have done so on the application put
6 forward to the Board?

7 MS. MURPHY: With respect to the matters
8 that you are hearing about in this hearing, the
9 Ministry stands by the position in the evidence that's
10 been put forward to you, that's right.

11 MR. LINDGREN: Q. Has the Ministry then
12 prepared an official response to this task force
13 report?

14 MR. TWORZYANSKI: A. I have no trouble
15 characterizing an official response in terms of what I
16 would say an unofficial report.

17 The Ministry is currently contemplating
18 dealing with some of the recommendations and, again, in
19 the context that some of them cannot be dealt -- or
20 will not be dealt with, nor can they be dealt with with
21 respect to what's been put before the Board here, and
22 we will continue to carry on business in the fashion
23 that we are.

24 And some of the other recommendations,
25 I'd really have to go over them individually and

1 determine whether a response is going to be made or
2 whether any particular action is going to be taken.

3 Q. Well, I asked you if there was an
4 official response. I was simply trying to determine
5 whether or not there has been a written response by the
6 Ministry to this report? You seem to have problems
7 with the words official as opposed to non-official.

8 A. The report has been, to my
9 understanding, debated within the Ministry. A number
10 of positions have been discussed, some of those have
11 been probably written down.

12 Insofar as -- when you talk -- mention an
13 official response, I think of something like the
14 response that was made to the Baskerville Audit where
15 the Ministry put forward a specific position. That
16 kind of action has not been taken with regard to this
17 report.

18 Q. Can we expect to see that kind of
19 action taken with respect to this report?

20 A. No, I don't think so. As I
21 indicated, this is a report dealing with some
22 operational matters and that type of action doesn't
23 appear to be warranted.

24 Q. Well, one of the operational matters
25 that this document speaks to is monitoring, monitoring

1 in the field and, in that regard, I would refer you to
2 page 27 of this document. In the last full paragraph
3 halfway through there is an indication that:

4 "The MNR in altering and approving
5 company management plans has attempted to
6 modify wood production operations to
7 better provide for these other interests.
8 These modifications often result in
9 additional wood production costs, but
10 given the lack of a database on these
11 other resource values and the sometimes
12 absence of on-site field inspections,
13 these modifications are of questionable
14 merit."

15 MS. MURPHY: And this is about
16 monitoring, this paragraph?

17 MR. LINDGREN: Q. My question is this:
18 First of all, can you confirm the statement that there
19 is sometimes an absence of on-site field inspection
20 with respect to these non-timber resource values?

21 MR. TWORZYANSKI: A. I can confirm that
22 that is what is written and that is the opinion of the
23 individuals who wrote the report.

24 Q. In your capacity as an MNR witness in
25 this hearing, I am asking you to confirm whether or not

1 the MNR perceives that there has been an absence of
2 on-site field inspections for these non-timber values.

3 MS. MURPHY: In fairness, I don't see
4 that this is a reference to the monitoring after the
5 plan is approved. I am just confused as to how this
6 relates to the monitoring. Maybe I am just missing
7 something.

8 MR. LINDGREN: Well, it speaks to the
9 monitoring and inventory issues that we have been
10 speaking about consistently throughout this panel.

11 THE CHAIRMAN: Well, Ms. Murphy, we are
12 talking on-site field inspections with regards to
13 non-timber values. To the extent that this is
14 justifying what has been done or checking on what has
15 been done, it could be considered monitoring to a
16 certain extent.

17 MS. MURPHY: That's my concern because I
18 am not certain that this is dealing with checking what
19 has been done.

20 What they are saying is, as I understand
21 what it is saying, due to the lack of data the
22 modifications in timber plans are sometimes, it says,
23 of questionable merit. As I understood it, they are
24 talking about the information that's used and then
25 subsequent to that a modification or, in fact, a plan

1 prescription is put in place.

2 And I think what I understand this to be
3 is, they are saying you shouldn't be doing that without
4 doing the field inspection first and they are saying
5 that sometimes it is done, that modification to protect
6 non-timber values is done without having done the field
7 inspection. That's my concern. I just think it is the
8 other end of the --

9 MR. LINDGREN: Mr. Chairman, to
10 paraphrase Mr. Tworzyanski's characterization of this
11 document, it is a quasi-audit of some sort that has
12 detected or at least identified a potential problem. I
13 am asking if the Ministry conceives this as a problem.

14 THE CHAIRMAN: All right. Let's try and
15 move this along.

16 Mr. Tworzyanski, in your opinion is there
17 a deficiency in the on-site field inspection which
18 relate to then developing modifications in the planning
19 process in the silvicultural prescriptions?

20 MR. TWORZYANSKI: Okay. My opinion would
21 be that - how can I say it - you are asking me to go
22 over a very, very large piece of area here.

23 I could agree that sometimes there may be
24 a lack of on-site field inspections that precede the
25 determination of a set of activities that may follow.

1 I would not agree that that is a common practice.

2 MR. LINDGREN: Q. Without these on-site
3 field inspections, how is it possible to determine that
4 the modifications are questionable?

5 MR. TWORZYANSKI: A. Could you rephrase
6 that?

7 Q. There is an indication that given
8 that these on-site field inspections are sometimes
9 absent, the authors indicate that the modifications can
10 sometimes be of questionable merit, and my question to
11 you is: How can that determination be made unless and
12 until the field inspections are made?

13 A. I think you are confusing a couple of
14 things here. What my understanding is of what the
15 authors are saying is, that in some cases modifications
16 have been requested to field practices that are going
17 to be implemented and they are indicating that
18 sometimes that they are asked to change their practices
19 without having a field inspection done of what the
20 situation is prior to it occurring.

21 And I believe you are somewhat confusing
22 that with an ongoing operation and then asking for a
23 modification to happen to that. That's not my
24 understanding of what's described here.

25 Q. Very well. My concern is what

1 happens up front and my final question on this
2 particular matter is this: Without comprehensive field
3 inspections, how do you know that you are not missing
4 values, non-timber values that should be protected?

5 A. Well, I think Panel 15 would have
6 described that and Mr. Cary also indicated in part of
7 his evidence that prior to -- we are really starting to
8 go through the whole planning process again and the
9 various forms of inspection or acquisition of
10 information that can take place other than by being in
11 the field.

12 THE CHAIRMAN: Mr. Lindgren, the Board
13 doesn't feel it is helpful to re-explore that evidence.

14 MR. LINDGREN: Q. One final set of
15 questions about this document. Can I ask you to refer
16 to page 31.

17 MR. TWORZYANSKI: A. Yes, I have page
18 31.

19 Q. At the last full paragraph there is
20 an indication that:

21 "It is clear that the reviews to date
22 have not adequately addressed the
23 Minister's requirement to report to the
24 Legislature on the relationship between
25 growth and harvest."

1 And then the problem is stated as
2 follows:

3 "There is no accepted methodology for the
4 accounting of the relationship between
5 harvest and growth as required under
6 section 64(c) of the Crown Timber Act."

7 Does the Ministry agree with this
8 assessment of the problem and, if so, what does the
9 Ministry intend to do about it?

10 A. Yes, the Ministry agrees that there
11 is no accepted methodology for making that
12 determination and that is currently being addressed by
13 our growth and yield people.

14 Q. Thank you. Mr. Cary, in your
15 evidence you indicated that the ultimate sanction for
16 non-compliance with the terms of an FMA is termination
17 of the FMA?

18 MR. CARY: A. Was that my evidence?

19 Q. That's found at page 31 of the
20 witness statement.

21 A. Yes indeed, sorry.

22 Q. Can you confirm for me that no FMA to
23 this point has been terminated in Ontario?

24 A. Yes, I can.

25 Q. Would you agree with me that it is

1 extremely unlikely that an FMA will be terminated in
2 Ontario? Isn't there a --

3 THE CHAIRMAN: How can you ever make an
4 assessment at this point in time, that's ridiculous.

5 MR. LINDGREN: Q. Well, Mr. Cary, other
6 than in cases of bankruptcy which, under the terms of
7 the FMA, is...

8 THE CHAIRMAN: Mr. Lindgren, there is a
9 discretion given as to whether or not an FMA can be
10 cancelled. Surely that is determined by the facts of
11 the situation when it comes up before the appropriate
12 authority as to whether or not to cancel.

13 MR. LINDGREN: That's right, Mr.
14 Chairman, and my question is this: Are there any
15 guiding principles or circumstances in the exercise of
16 that discretion.

17 THE CHAIRMAN: No, let's move on. That's
18 a waste of time.

19 MR. LINDGREN: Q. Can I ask you to turn
20 to Interrogatory Question No. 27(b) in Exhibit 928A,
21 Mr. Cary.

22 Now, to paraphrase very quickly the
23 question and answer here, Mr. Cary, we asked if the cut
24 approval may differ from the silvicultural ground rules
25 or the AOC prescriptions and, in essence, the Ministry

1 answer on this page and on the next page states that
2 the cut approval must conform to the plan, but
3 sometimes cut approval may be more detailed than the
4 plan and, for that reason, it is usual to assess the
5 clients with the details set out in the cut approval.
6 Is that correct?

7 MR. CARY: A. That is what the answer
8 says.

9 Q. Is it fair to say, Mr. Cary, that the
10 silvicultural ground rules for normal operation areas
11 and for AOCs may also be quite detailed?

12 A. Well, there will be a prescription on
13 an AOC and there is silvicultural ground rules on
14 normal operating areas, and in areas of concern those
15 prescriptions would be precise.

16 In the silvicultural ground rules, as you
17 are aware, options are laid out for renewal.

18 Q. In this regard, Mr. Cary, can I ask
19 you to turn to page 54 of Exhibit 814. These are the
20 excerpts from the Red Lake Crown Management Unit.

21 MRS. KOVEN: What was that page again,
22 Mr. Lindgren?

23 MR. LINDGREN: That was page 54.

24 MR. CARY: 54?

25 MR. LINDGREN: Q. Correct.

1 MR. CARY: A. I have that.

2 Q. Now, reading across that table we see
3 for the site class 2 black spruce sites there is a site
4 description: very poorly drained organic soils,
5 moderately wet and then we see the renewal treatment
6 prescription of shear blading and so on.

7 I'm not particularly interested in the
8 details of the prescription, but I'm interested in the
9 original site description. Is there an inspection or
10 monitoring process in place that is designed to verify
11 this original site classification?

12 MS. MURPHY: At what point?

13 MR. LINDGREN: Q. At any point during
14 the preparation of the plan or after the preparation of
15 the plan.

16 MR. CARY: A. Well, the preparation of
17 the plan, as I understand it, was discussed -- the
18 specific preparation of this plan was discussed by Mr.
19 Multamaki, Panel 15, and I presume that he went out and
20 had -- he was aware of this site description -- sorry,
21 he developed this site description as the plan author
22 for the planning team. So what is there --

23 Q. My question is this: Is there any
24 formal process by which that original classification or
25 characterization of the site is verified at some point

1 or corroborated?

2 A. Corroborated when?

3 Q. Either during the implementation of
4 the prescription or after the implementation of the
5 prescription.

6 My concern here, Mr. Cary, is that merely
7 checking whether or not the present description has
8 been complied with not tell you if the site
9 classification or characterization is incorrect, and my
10 concern is that if that original mistake is not somehow
11 picked up, problems arising from compliance with the
12 prescription may not necessarily be picked up as well,
13 in fact that can be confounded if that site
14 prescription remains unchanged?

15 A. Normally after harvest there is a
16 field inspection, and I described those inspections
17 earlier in my evidence, and that post-cut inspection
18 would refine and confirm the description, the
19 prescription that was in the annual work schedule for
20 this particular piece of ground.

21 Q. And does that include the
22 characterization of the site class, the site
23 description that we find here?

24 A. Yes, in a general sense. You would
25 make -- yeah, you would match what you have there to

1 your prescription.

2 Q. Okay, thank you.

3 Mr. Gordon, in your evidence you
4 suggested that the Ministry has no formal auditing
5 process to check the quality of the planting done by
6 FMA holders. Was that a fair restatement of your
7 evidence on that point?

8 MR. GORDON: A. I can't remember, but we
9 do not directly check the quality of tree planting on
10 FMA units because of the intent of the FMA agreement
11 where we have given a lot of the responsibility for
12 doing such things as that to the FMA holder.

13 Q. If the Ministry checks only the
14 stocking and if it's adequate and meets the
15 specifications the payments will be made, the
16 silvicultural payments will be made?

17 A. What the Ministry does do before
18 paying the FMA holder for a silvicultural treatment is
19 ensures that the silvicultural treatment complies with
20 the approved work schedule and meets the specifications
21 outlined in the ground rules of the FMA.

22 And so, for example, relative to tree
23 planting, sometimes you will see in the ground rules
24 that there will be a minimum of 1,700 trees per hectare
25 planted, so the only "quality check" that they would do

1 in the very narrow sense of the word would be to check
2 to see that that number of trees is existing.

3 But we don't, for example, check the
4 space between individual trees as we do on our own
5 contracts.

6 Q. Then presumably some time later,
7 perhaps eight or ten years later, that stand may well
8 be free to grow?

9 A. That is the intent.

10 Q. But it's also conceivable that after
11 that period it may not be free to grow, perhaps through
12 no fault of the FMA holder, the FMA holder may in fact
13 have planted the stock, followed the prescriptions and
14 the specifications and yet the plantation was a failure
15 and, in that circumstance, Mr. Gordon, what the would
16 the options of the Ministry be? What would the
17 Ministry do in that particular set of circumstances?

18 A. We would -- perhaps I will ask Mr.
19 Tworzyanski to handle that question.

20 MR. TWORZYANSKI: A. The FMA holders are
21 required to have a stand reach a certain level of
22 stocking at usually five years following implementation
23 of the silvicultural treatment. If that in fact does
24 not happen, the FMA holder has to retreat that at their
25 own expense.

1 There's no qualifications in there in
2 terms of the situations or circumstances leading to
3 that. If the silvicultural treatment is applied
4 according to silvicultural ground rules and payment has
5 been made the FMA holder, if that treatment fails, has
6 to go back and retreat that.

7 THE CHAIRMAN: At his expense?

8 MR. TWORZYANSKI: That's correct.

9 MR. LINDGREN: Q. And that is regardless
10 of whether or not the failure is attributable to any
11 actions on the part of the FMA holder?

12 MR. TWORZYANSKI: A. There are no
13 qualifications in the agreement that restrict the
14 obligation to retreat. I should clarify that, other
15 than natural disasters or aspects of that nature and
16 then, of course, remedial action would be determined
17 between the Crown and the FMA holder.

18 Q. In that kind of situation is it
19 conceivable that the action decided upon may well be to
20 leave the land as NSR to guarantee that some sort of
21 retreatment will occur?

22 A. If a natural disaster occurred, for
23 example?

24 Q. That is one example.

25 A. That's the easiest one to deal with.

1 For example, if the trees died because of drought or
2 disease and the area was unregenerated, it wouldn't be
3 reasonable to leave it in that state, the course of
4 action would generally regenerate that area somehow.

5 Q. Dr. Osborn, can I briefly turn to
6 you.

7 I don't think it's necessary to turn to
8 your document, but at page 548 there is an indication
9 that the monitoring of timber management effectiveness
10 is intended to answer two questions: Is there
11 sufficient volume today and will there be sufficient
12 volume tomorrow; is that correct?

13 DR. OSBORN: A. That's the overall
14 objective of the purpose of the undertaking, yes.

15 Q. And would you agree with me that that
16 question can be boiled down to a single question; that
17 is: Is the Ministry practising sustained yield on
18 Crown lands in Ontario. Is that the essence here?

19 A. Yes, in a way.

20 Q. Well why? Can you please explain
21 your qualification?

22 A. Yes. I don't like you bundling it up
23 in one bag. There is two distinct objectives: Am I
24 putting wood in the door today, am I effective in so
25 doing; and the second objective, and is what I'm doing

1 today ensuring to the best of my ability that there
2 will be wood in the mill tomorrow. There are two
3 distinct time horizons.

4 Q. Don't they both amount to sustained
5 yield?

6 A. I will come back to my phrase again,
7 yes, in a way. I'm not going to get hung up in a
8 phrase. I told you what the objectives are and
9 effectiveness measures.

10 Q. Well, as you know, Dr. Osborn, the
11 phrase 'sustained yield' is defined for the purposes of
12 FMAs in section 6(2) of the Crown Timber Act and, as
13 the Board well knows, the definition of sustained yield
14 there reads:

15 "The growth means the growth of
16 timber that a forest can produce and
17 that can be cut to achieve a continuous
18 approximate balance between the growth of
19 timber and timber cut."

20 Dr. Osborn, having regard to the
21 definition of sustained yield in the Crown Timber Act,
22 can you advise me if there is a formal process to check
23 whether that sustained yield is in fact being practised
24 on FMA lands?

25 MS. BLASTORAH: Mr. Chairman, we had an

1 almost identical discussion between Mr. Castrilli and
2 Dr. Osborn in, I believe it was Panel 3 or Panel 4, I
3 believe it was Panel 4 many months ago. I don't see
4 the point in going over this exact conversation again.

5 MR. LINDGREN: Well, presumably his
6 answer will be the same and the answer will be either a
7 yes or a no.

8 MS. BLASTORAH: Well, Mr. Chairman, I
9 don't see --

10 THE CHAIRMAN: Well, I'm not sure that
11 the answer was just a simple yes or a no.

12 MS. BLASTORAH: It wasn't, as you may
13 well recall, and having --

14 MR. LINDGREN: Well, perhaps I can
15 rephrase it to elicit a yes or no answer.

16 Q. Is there a formal process to check
17 whether or not sustained yield is being carried on on
18 FMA lands in Ontario?

19 DR. OSBORN: A. There is a practice as
20 described in the reports that I described to you to
21 look at the objectives of putting wood in the door
22 today and having the forest in a state to put wood in
23 the door tomorrow. The data that speaks to that are
24 contained in the two reports that were described, both
25 the annual report and the state of the forest report.

1 So, yes, there is a formal procedure to
2 look at those two objectives.

3 Q. Dr. Osborn, I have looked at the
4 tables that will be set out in the report of past
5 forest operations. Can you confirm for me that they
6 only record what was done and free to grow survey
7 results?

8 A. Yes, the tables in the Timber
9 Management Planning Manual at the moment speak to that,
10 yes.

11 Q. Would you agree with me that these
12 tables do not show an evaluation of management
13 effectiveness, they merely show whether you did what
14 you planned to do?

15 A. Ah, but they do speak to the first of
16 the two objectives and the effectiveness of that.

17 Q. Well, would you agree with me, Dr.
18 Osborn, that to show the effectiveness of management,
19 these tables would have to document the incremental
20 change from the pre-harvest situation to the
21 post-harvest situation and then this change would have
22 to be compared to what you hoped to achieve. Isn't
23 that the way management effectiveness is measured or
24 monitored?

25 A. Short term.

1 Q. Well, can't that be done in the long
2 term as well?

3 A. Yes, and that's not the method of
4 doing it.

5 Q. Well, Dr. Osborn, perhaps my concern
6 can be illustrated or spoken to in this question.
7 Would you agree with me that if you only evaluate how
8 many hectares were cut or planted, you are only
9 measuring the completion of short-term projects and you
10 are not looking at the overall effectiveness of
11 management?

12 A. Yes. For those terms, yes.

13 Q. Mr. Gordon, I have two final
14 questions for you; to do that, I would like to file as
15 the next exhibit an answer to an undertaking that was
16 provided by the Ministry of Natural Resources and the
17 undertaking was to provide an update of page 12 of the
18 Provincial Auditor's Report showing FMA expenditures.

19 MR. HUFF: (handed)

20 MR. LINDGREN: And while that exhibit is
21 being distributed, Mr. Gordon, perhaps you can obtain a
22 copy of Exhibit 936 which is your document on funding
23 estimates.

24 THE CHAIRMAN: Exhibit 955.

25 ---EXHIBIT NO. 955: MNR answer to undertaking re:

1 update of page 12 of Provincial
2 Auditor's Report.

3 MR. LINDGREN: Q. Mr. Gordon, can you
4 direct your attention to the year 1988-89 on Exhibit
5 955, and can you confirm for me that a total of
6 \$79,141,000 were paid to FMA holders with respect to
7 road building and silvicultural activities?

8 MR. GORDON: A. Based on the piece of
9 paper you put in front of me, that's correct.

10 Q. Now, could I ask you to turn to
11 Exhibit 936 pages 5 and 6. Can you confirm for me that
12 the money allocated in this current year, 1989-90, for
13 the monitoring and inventory of non-timber values is
14 \$1,310,000? What I have done simply is add up the
15 figures for item No. 1, No. 2 -- 8.1 and 8.2.

16 A. You are going to have to go slower
17 for me. I'm looking at page 6.

18 Q. We are looking at pages 5 and 6.

19 A. Yes.

20 Q. We are looking at the money that was
21 actually allocated to monitor or inventory non-timber
22 resources, and I have added up the items that we find
23 in No. 1, provincial effects/effectiveness monitoring.

24 A. So that is 200, the 240 and the 70?

25 Q. That's correct.

1 A. Okay.

2 Q. And then I have added No. 2 wildlife
3 pop monitoring.

4 A. Right.

5 Q. I have gone on to the next page, Item
6 8.1, wildlife \$625,000 and 8.2, ANSIs, we see that
7 \$75,000 has been allocated in this current year.

8 A. And that should total...?

9 Q. \$1,310,000?

10 A. That's correct.

11 Q. Now, can you confirm that that figure
12 is approximately 1.6 per cent of the \$79-million paid
13 to FMA holders paid to last year?

14 A. Without doing the calculation, it
15 appears to be reasonable that if you do that
16 mathematical comparison that probably is the
17 percentage, if there is a reason for doing it, that's
18 correct.

19 Q. Mr. Cary, one final question for you.
20 In your evidence and in the evidence of the other panel
21 members we've heard a great deal about the activity
22 that may occur after harvest in terms of monitoring and
23 inventory work and compliance monitoring.

24 In our view, there appears to be an
25 imbalance between the amount of pre-cut inventory work

1 done by the Ministry versus the amount of post-cut
2 monitoring work in that there seems to be an
3 overemphasis on the latter.

4 My question is this, Mr. Cary: Would you
5 agree with me that the MNR appears to put more effort
6 into inspecting the results of a plan rather than
7 gathering on-the-ground information to help formulate
8 the plan?

9 MR. GORDON: A. First of all, before Mr.
10 Cary comments, I'm not sure you can directly make that
11 comparison by doing a comparison of those two numbers
12 that we agreed it was a ratio of about 1.5 per cent or
13 whatever.

14 What Exhibit 936 was intended to indicate
15 to the Board was the additional monies MNR feels it
16 needs to deliver the draft terms and conditions if so
17 ordered, and that is all that was intended to do.

18 So what I'm trying to say is, I'm not
19 sure that your comparison makes sense.

20 Q. Well, if we take the total of the
21 money that is allocated for monitoring and inventory of
22 these non-timber values, we factor in perhaps Dr.
23 Euler's very rough estimate of the Wildlife Branch's
24 budget of \$10-million, we have a total of perhaps
25 \$11-million for the delivery and monitoring of the

1 non-timber program. That still appears to be --

2 THE CHAIRMAN: It's a non-timber wildlife
3 program. There are certainly other programs like
4 tourism and, you know, I means there is other values
5 out there upon which money is being spent.

6 MR. LINDGREN: That's right. But I'm
7 wondering that, given the difference between the money
8 that is made available to the Wildlife Branch in terms
9 of delivery of the programs - and I should point out
10 that some of these programs are delivered on private
11 lands and not just Crown lands - given that total which
12 appears to be in the range of \$11-million and looking
13 solely, solely at money that is paid to FMA holders,
14 there appears to be a great imbalance.

15 And I'm wondering if that's indicative of
16 the priorities of the Ministry of Natural Resources.

17 MR. GORDON: A. Definitely not.

18 MR. LINDGREN: Thank you. Those are my
19 questions.

20 THE CHAIRMAN: Thank you, Mr. Lindgren.
21 Mr. Edwards, are you ready to go?

22 MR. EDWARDS: Yes. I probably need five
23 minutes or so to set up, Mr. Chairman.

24 THE CHAIRMAN: All right. Let's take
25 break for 10 minutes and then we will come back.

1 ---Recess taken at 10:45 a.m.

2 ---On resuming at 11:00 a.m.

3 THE CHAIRMAN: Thank you. Be seated.

4 MR. GORDON: Mr. Chairman, I have an
5 answer to an undertaking--

6 THE CHAIRMAN: Yes.

7 MR. GORDON: --from Mr. Lindgren. With
8 reference to Forests for Tomorrow's Interrogatory No.
9 45 from Panel 16, I was asked to find out the area
10 relative to Moosekull Lake where there was an incursion
11 into the reserve and no penalty was processed.

12 The area of the incursion was one
13 hectare.

14 THE CHAIRMAN: Thank you.

15 Mr. Edwards?

16 MR. EDWARDS: Thank you, Mr. Chairman.

17 Mr. Chairman, my first area of
18 questioning will be with respect to, really, I guess
19 term and condition No. 8 which is the report of past
20 forest operations and I'll be asking some questions of
21 the panel relating to the present Crown Timber Act and
22 then leading into some of the issues of the proposed
23 changes.

24 Ms. Murphy sent to me a letter which
25 addresses some of the concerns that I had raised

1 previously and I have some copies here. I'm going to
2 distribute them because I think they will assist in the
3 discussion.

4 (handed)

5 THE CHAIRMAN: This will be Exhibit 956.

6 ---EXHIBIT NO. 956: Letter from Ms. Murphy to NOTOA
7 dated November 2, 1989.

8 MR. EDWARDS: Do any of the members of
9 the panel have a copy? I understand that you may.

10 MR. GORDON: This is the November 2nd
11 letter?

12 MR. EDWARDS: Yes, the November 2nd
13 letter, yes. Mr. Gordon has it.

14 MR. CARY: Yes, I have a copy.

15 DR. MacLEAN: Could I get one?

16 MS. BLASTORAH: (handed)

17 CROSS-EXAMINATION BY MR. EDWARDS:

18 Q. Now, I note the discussion of this is
19 at pages 39 and 40 of the witness statement which would
20 suggest to me I should be asking Mr. Cary or Mr.
21 Tworzyanski about this.

22 Could I have some direction on that,
23 please?

24 MR. CARY: A. What page?

25 Q. Pages 39 and 40 of the witness

1 statement deals with generally the issues of the
2 amendments and, of course, Exhibit 919 is the
3 correspondence respecting the Crown Timber Act and a
4 description of the Act and proposed amendments.

5 MR. EDWARDS: Mr. Chairman, you have
6 that. I believe I advised Ms. Devaul I would be
7 referring to that. And Exhibit 918 which is of course
8 the legislation.

9 THE CHAIRMAN: Okay.

10 MR. EDWARDS: Do you have those, Mr.
11 Chairman?

12 THE CHAIRMAN: Yes.

13 MR. EDWARDS: Q. Mr. Cary, I will
14 propose to put these questions to you, sir.

15 MR. CARY: A. Yes, Mr. Edwards.

16 Q. Sir, I'm going to ask you to address
17 yourself to Section 18 of the present Crown Timber Act
18 and I will just read that into the record, if I may.
19 Section 18, sub 1 is:

20 "A licence shall not be assigned,
21 pledged or charged without the consent in
22 writing of the Minister and permission to
23 cut timber on the licensed area shall not
24 be granted by a licensee without the
25 consent in writing of the Minister and

1 she is not, under any circumstances,
2 bound to give such consent and she may
3 impose such terms and conditions as she
4 considers proper."

5 Subsection 2 is:

6 "An assignment, pledge or charge of a
7 licence or permission to cut on a
8 licensed area does not have any force or
9 validity unless the Minister has
10 consented thereto in writing."

11 Now, sir, I understand that the present
12 interpretation of this section in its application is
13 that if a licensee proposes to assign, in the legal
14 sense of the word assign, a right to cut, that
15 permission is required?

16 A. That's my understanding.

17 Q. And the words pledge or charge have
18 very specific meanings in law; pledge perhaps similar
19 to a mortgage, a charge is similar to a mortgage; that
20 is to say, some type of title is granted to a
21 particular piece of property.

22 If it is to be pledged or charged, the
23 consent in writing of the Minister is to be obtained.

24 A. That's my Understanding, but I'm not
25 familiar with legal terminology, I should tell you.

1 Q. Well, you may turn to your counsel
2 for your assistance at any time in these discussions,
3 sir.

4 A. Good, thank you. I will be.

5 Q. I expect you will be. However,
6 applying the ordinary rules of the English language to
7 Section 18, sir, it is clear that a licence shall not
8 be assigned, pledged or charged without the consent in
9 writing of the Minister.

10 What then is the meaning of the words
11 'and permission to cut timber on a licensed area shall
12 not be granted by the licensee without the consent in
13 writing'? How, sir, do you or the Ministry interpret
14 permission to cut?

15 MS. MURPHY: And I believe it was to that
16 very matter that I corresponded with my friend and have
17 set out in that letter what would be the intention of
18 that section.

19 THE CHAIRMAN: Which is to enter into
20 these third party agreements; is it not?

21 MS. MURPHY: It is intended to deal with
22 situations where licensees intend to give away or sell
23 their rights under a licence.

24 MR. EDWARDS: Q. Sir, is it intended to
25 deal with the situation where a licensee simply says to

1 somebody, you may cut in this area?

2 MR. CARY: A. If we issue a licence to
3 somebody and he has an approved plan and he has a
4 cutting approval, he can go ahead and cut. But it's
5 specifically issued to him, no one else can cut on that
6 licence area unless he or she has the consent of the
7 Minister.

8 Q. That is your evidence, sir. I mean
9 I'm delighted to hear if it is.

10 MS. MURPHY: Well, that is not fair to
11 the witness. I have provided to my friend a letter
12 that deals with this matter and it's clear from - I
13 attempted to make this as clear as possible in my
14 letter - that the idea is that the licensee has the
15 right to the timber and can cut timber.

16 The licensee can have his or her
17 employees do that for him or her, the licensee can have
18 a contractor do that for him or her, but they are
19 exercising the rights of the licensee when they do
20 that.

21 THE CHAIRMAN: And they haven't made a
22 formal assignment of those rights?

23 MS. MURPHY: Of those rights, that's
24 entirely correct. And if they ask a contractor to
25 exercise those rights for them and then supply them

1 with their wood, they have not given away their rights
2 to cut wood.

3 THE CHAIRMAN: With the corresponding
4 liability that they still remain liable for anything
5 the third party may do.

6 MS. MURPHY: That person is not the third
7 party, in that sense, that's right. They have not
8 given away their liability for anything that person
9 does, that's right.

10 MR. EDWARDS: I'm not certain I
11 understood all that.

12 Q. But, Mr. Cary, do you adopt the
13 answer given by your counsel?

14 MR. CARY: A. Yes, I do. I'm sorry, Mr.
15 Chairman.

16 THE CHAIRMAN: Thank God said Mr. Cary
17 for that answer.

18 MR. CARY: I knew I'd call on her.

19 MR. EDWARDS: Q. Do you then, sir,
20 construe the words 'permission to cut timber on a
21 licensed area' to require the consent in writing of the
22 Minister? Any type of permission to cut will require
23 the consent in writing of the Minister?

24 MS. MURPHY: Again, I mean, I think I
25 have tried to make it as clear as possible that the

1 person that has the licence has an employee, I suppose
2 in some broad sense they are giving their employee
3 permission to go and cut. In that sense we would
4 suggest that that does not require the approval of the
5 Minister. By the same token, if that person asks their
6 contractor to go and do that for them, that would not,
7 in our view, require the consent of the Minister.

8 THE CHAIRMAN: All right. Are you taking
9 in a broad everyday sense that the licensee can, in
10 effect, grant the rights to do the actual cutting to
11 anyone under their direction and control without
12 getting the consent of the Minister?

13 MS. MURPHY: Well, yes, except that I
14 would suggest that that is not granting any rights.

15 THE CHAIRMAN: Okay.

16 MS. MURPHY: Right.

17 THE CHAIRMAN: Granting permission to
18 cut?

19 MS. MURPHY: Asking a person to exercise
20 their right is what they are doing.

21 MR. EDWARDS: Well, Mr. Chairman, your
22 point was the one I was attempting to make, the
23 granting of permission to cut, does that require the
24 consent in writing, or is that --

25 THE CHAIRMAN: I take it this has never

1 been tested in the courts in terms of an actual
2 interpretation?

3 MR. EDWARDS: No, I do not believe that
4 it has, Mr. Chairman. It may be getting a test right
5 now.

6 Q. Sir, if a licensee contracts with a
7 contractor simply granting permission to cut, making
8 the person I believe what might be called a permittee,
9 would that require the consent in writing of the
10 Minister if there was a written contract?

11 MS. MURPHY: And I can advise you that
12 this is not a situation in which the Minister -- that
13 is not a situation in which the Minister has ever been
14 asked to or ever would be required, in our view, to
15 give written permission. So the answer is no, I
16 believe.

17 MR. EDWARDS: And that is the
18 interpretation that is applied to the words 'permission
19 to cut' when the permission is granted in writing.

20 Q. What about if a permission is granted
21 simply orally, would the same interpretation apply to
22 the words 'permission to cut timber on a licensed
23 area'?

24 MR. CARY: A. I would think yes.

25 Q. All right. So in Section 18 sub 1

1 it's fair to say that you don't see the word 'and',
2 after the word Minister:

3 "A licence shall not be assigned, pledged
4 or charged without the consent in writing
5 of the Minister and permission to cut
6 timber on licensed area shall not be
7 granted..." et cetera.

8 You don't see that as in any way
9 disjunctive, you see that as conjunctive?

10 THE CHAIRMAN: Well, Mr. Edwards, in
11 fairness I think we are getting into some fairly
12 sophisticated legal interpretation and, quite frankly,
13 I don't think you will ever get a definitive answer
14 until a court has looked at it or someone as inferior
15 as this Board.

16 MR. EDWARDS: Q. Well, I will put the
17 question with respect to subsection 2 then where the
18 disjunctive -- or the more commonly disjunctive word
19 'or' is used:

20 "an assignment, pledge or charge of a
21 licence or permission to cut on licensed
22 area does not have any force or
23 validity."

24 Do you see permission to cut on a
25 licensed area as being simply an extension of

1 assignment, pledge or charge; is that your
2 interpretation?

3 MS. MURPHY: Yes.

4 MR. CARY: Yes, it is.

5 MR. EDWARDS: Q. So any licensee --

6 THE CHAIRMAN: Don't feel any coercion
7 here, Mr. Cary. You are free to contradict your
8 counsel if you must.

9 MR. CARY: At my peril.

10 MR. EDWARDS: I must counsel the witness
11 that Ms. Murphy has a large red button down here.

12 MR. CARY: I hope she keeps pressing it.

13 MR. EDWARDS: Q. Sir, going from that
14 point, may I assume that the assignment, pledging or
15 charging - which are words which have legal impart -
16 those situations where the Minister does require
17 consent, could you describe them or embellish on the
18 situation where you would require consent?

19 MS. MURPHY: Can I just make a
20 suggestion. I mean, it might be fairer to everyone
21 here to just take a couple of minutes and read the
22 letter that I wrote in which I tried to deal with what
23 I think is the issue, and rather than go through this
24 step by step, maybe that would help.

25 As I understood it was an issue that came

1 out of the issues statement and I thought it would be
2 best to speak to my friend, clarify what the issue is
3 and provide him with some information.

4 MR. EDWARDS: I'm quite content with
5 that, Mr. Chairman. I just think the words speak for
6 themselves and I appreciate that Ms. Murphy has put the
7 interpretation on the record.

8 THE CHAIRMAN: What is the point behind
9 this, Mr. Edwards?

10 MR. EDWARDS: I'm not trying to be
11 obscure, Mr. Chairman, I will be as direct as I can.

12 THE CHAIRMAN: No, but is it with respect
13 to exercising control on whoever actually carries out
14 the activity?

15 MR. EDWARDS: Yes, in part. If one has
16 an employee to whom one says: Go cut the tree over
17 there, one is giving permission, obviously to one's
18 employee there is a doctrine of respondeat superior or
19 whatever you want to call, vicarious liability, there's
20 all sorts of doctrines which would ensure that the
21 action of the employee comes back to the employer.

22 However, when you're dealing with an
23 independent contractor to whom one simply says: Go
24 cut, at that stage it would seem to me that any rights
25 which affected other parties may have against the

1 licensee are not -- the rights against the cutter are
2 not as clear.

3 THE CHAIRMAN: Yes, but is not the FMA
4 holder responsible to the Crown to carrying out the
5 activities in accordance with the timber management
6 plan?

7 MR. EDWARDS: That is the entire point,
8 Mr. Chairman, they are responsible to the Crown; they
9 are not responsible to other affected persons.

10 THE CHAIRMAN: So you are worried about
11 your cause of action against the other person?

12 MR. EDWARDS: Against a tortfeasor, yes.

13 MR. CASSIDY: What relevance does that
14 have to this hearing? You know, I have listened to
15 this for about four panels and for the life of me I
16 don't understand the relevance of this
17 cross-examination.

18 MR. EDWARDS: Well, I can explain it to
19 my friend if he has missed the point.

20 The relevance is this: If a third party
21 contractor takes an action --

22 MS. MURPHY: Let's be careful, okay.
23 Third party is one thing, that's another concept.
24 Let's not get them confused.

25 MR. EDWARDS: If a contractor takes an

1 action which injuriously affects somebody else, for
2 example a tourist outfitter, by doing something wrong,
3 a trespass to property, trespass to chattels, injurious
4 affection by damaging the business, whatever, that
5 person, the injured person in law has a right one
6 assumes to take some action against the person who has
7 done the wrong.

8 Now, I think Ms. Murphy's position is
9 that the injured party may have the right to sue the
10 licensee and the licensee third parties, the
11 contractor. My view is that stands the legal position
12 entirely on its head and what really ought to be done
13 is that an action would have to be taken directly
14 against the contractor, and perhaps the contractor can
15 bring in its superior.

16 But the point is that the failure to
17 document adequately the identities of third party
18 contractors -- or, pardon me, of contractors has
19 prejudiced -- in the view of my clients has prejudiced
20 them, and it's for that reason that I want to pursue
21 MNR's interpretation because it's certainly my
22 interpretation that the present legislation would
23 require some type of recordkeeping.

24 THE CHAIRMAN: And without sorting out
25 the liabilities and the form of the action, you are

1 concerned about the documentation which is available to
2 support whatever action your injured party might want
3 to take?

4 MR. EDWARDS: Absolutely.

5 THE CHAIRMAN: Is that the crux of it?

6 MR. EDWARDS: That is the crux of it and
7 the point is that --

8 THE CHAIRMAN: That's fair game, Mr.
9 Cassidy.

10 MR. CASSIDY: Well, I don't know.

11 THE CHAIRMAN: No, they are talking
12 here -- I think Mr. Edwards is raising not who is
13 liable and which form of action he brings, but how the
14 relationship is documented, and it relates back to the
15 Crown Timber Act and an interpretation of that Act and
16 it relates partly to the obligations which are imposed
17 through the Crown Timber Act on whoever ultimately
18 carries out the activity.

19 MR. CASSIDY: Fair enough, Mr. Chairman.
20 I just get this sort of feeling, sort of extra-hearing
21 feeling that what we are embarking upon here is
22 questions that assists in some other forum, assists him
23 to take action in some other forum. I query whether it
24 has to do with harvest, access, maintenance or renewal.

25 THE CHAIRMAN: No, but under this process

1 we are dealing with documentation, we are dealing with
2 tracing relationships. How he uses that documentation
3 in some other forum, such as a court, is beyond the
4 scope of this hearing.

5 But certainly if Mr. Edwards is concerned
6 that it is not appropriately documented as to who will
7 be carrying out the activity, apart from the face of
8 the licence, then I think that is a matter that can be
9 canvassed before this Board.

10 MR. EDWARDS: Thank you. I'm just about
11 to move on. I have a couple of more questions in that
12 area and then I will be finished in this particular
13 area.

14 Q. Mr. Cary, I believe Ms. Murphy
15 suggested that information about the identity of all
16 these persons would not be in the hands of the Crown
17 and provided two reasons at page 2 and 3 of her letter
18 where she says that:

19 "The argument that such information
20 should be available with respect to
21 persons carrying out the harvest activity
22 applies equally to all those other
23 persons acting for licensees pursuant to
24 contract."

25 Now, I'm not going to ask you a question

1 about that, I would simply notice that Section 18 talks
2 about permission to cut, doesn't talk about permission
3 to scarify.

4 But the question, sir, is this - the
5 collection of this information would be extremely
6 onerous is the position taken - would you not assume,
7 sir, from your knowledge of the business that these
8 types of records would have to be kept in the ordinary
9 course of business for accounting purposes, for income
10 tax purposes, for example; that is to say, the identity
11 of the contractor would have to be kept in some form
12 one assumes the licensee.

13 MR. CARY: A. By the company.

14 Q. Yes.

15 A. Yes, I presume so.

16 MS. MURPHY: You're talking about many
17 hundreds of companies.

18 MR. CARY: And many thousands of
19 contractors.

20 MR. EDWARDS: Q. And the second point,
21 sir, is that - this is at page 3 - the Crown has no
22 authority to collect the information and suggests that
23 there must be statutory authority to do so.

24 And Ms. Murphy's letter continues:

25 "We are unaware of any authority in the

1 Crown to require licensees to provide
2 information about the identity of their
3 contractors."

4 THE CHAIRMAN: Well, surely, even if you
5 don't have statutory authority, what prevents the
6 Ministry from putting that in as a term of the FMA
7 agreement per se and simply saying to the FMA holders:
8 We want to be notified or we want to be advised as to
9 who will be carrying out the activities when you have
10 decided who will carry them out.

11 MS. MURPHY: I would suggest to you that
12 when government collects information from people they
13 have to have, and we are prepared to demonstrate, there
14 is a government purpose in doing so.

15 THE CHAIRMAN: Well, could not the
16 purpose be that you have had umpteen complaints about a
17 particular operator and you are determined that it is
18 inappropriate that this operator carry out particular
19 activities, regardless of who has got the liability if
20 they do, such as the company, why is it beyond the
21 powers of the Crown or the Ministry to say: We have
22 got a track record with respect to a particular
23 operator, we are not convinced that he can carry out
24 the activities in an appropriate manner, and we don't
25 wish the FMA holder to utilize that contractor.

1 MS. MURPHY: All right. But my point is
2 this, Mr. Chairman: If a government agency is going to
3 require a citizen to provide information, the
4 government agency has to be prepared to say information
5 of that nature is always required by us to undertake
6 our responsibilities.

7 And I think the position here is that
8 that requirement and need has not been identified by
9 the Ministry of Natural Resources, it has not. And
10 that being the case, it has not said it requires
11 further statutory authority or the authority to collect
12 it. And I believe that's the situation.

13 MR. MARTEL: Why should someone have to
14 scramble around, hire a lawyer - let me finish - hire a
15 lawyer to try to determine who in fact might have
16 damaged their property?

17 MS. MURPHY: But the problem is this, No.
18 1, I would point out to you that there is no
19 information that this has happened; and, No. 2, you are
20 talking about their property. What the Crown is
21 dealing with is activities on Crown lands.

22 MR. MARTEL: But I think we heard Mr.
23 Edwards way back in a panel many, many months ago
24 indicate that one of his clients - I am just going by
25 memory - he had difficulty trying to identify who it

1 was in fact that was doing the cutting that caused some
2 damage to one of his clients, I think, or one of the
3 people in the organization around the Oba area I
4 believe. I'm just going by memory.

5 MR. EDWARDS: I don't recall specifying
6 it, but I can assure the panel that that is a complaint
7 which I have received from my clients, yes.

8 MS. MURPHY: First of all, I mean, fair
9 enough. That is not evidence at this point, but in any
10 event, all I can say to you is that it has not been
11 identified as the kind of information that the Ministry
12 of Natural Resources requires and, therefore, that they
13 are prepared to undertake the collection of this large
14 amount of information across the board for a government
15 purpose. That is the situation.

16 THE CHAIRMAN: I know, that is the
17 present situation.

18 MS. MURPHY: That's right.

19 THE CHAIRMAN: But it's being raised by
20 Mr. Edwards on behalf of his client that perhaps it
21 should.

22 MR. MARTEL: Or a guarantee that MNR
23 would find -- if you don't in fact want it all in
24 stacks of paper this high somewhere, that MNR take the
25 responsibility of obtaining that for whoever is

1 damaged.

2 MR. EDWARDS: That is the point.

3 MR. MARTEL: You can't have it both ways
4 in my opinion.

5 MS. MURPHY: I am sorry, I missed that.
6 What are the two ways?

7 MR. MARTEL: Well, you say you don't want
8 to collect that information because its too voluminous;
9 on the other hand somebody is having difficulty
10 obtaining information. Now, is MNR prepared to accept
11 the fact that if something happens out there - I don't
12 care how it happens - by somebody, a contractor, how
13 does an individual then find out, without hiring a
14 private detective, who in fact it is that has caused
15 the damage to either their property or someone else's
16 property, how are you supposed -- let's say we are
17 dealing with a numbered company.

18 MS. MURPHY: I hope you are not
19 suggesting there is anything wrong with a numbered
20 company.

21 MR. MARTEL: No, I'm not suggesting that,
22 I'm just talking about identifying who you deal with.

23 MS. MURPHY: Many of us are directors of
24 numbered companies. The point is this: If any person
25 phoned the Ministry and said I need to know who is the

1 licensee in some particular area, that is public
2 information.

3 THE CHAIRMAN: That is the licensee, but
4 they want to go the one step further, they want to know
5 who did the activity.

6 MS. MURPHY: The point is this: To go
7 the one step further, I don't know of any authority the
8 Ministry has to compel the licensee to provide their
9 personal information. I just don't know of any
10 authority there is to do that.

11 THE CHAIRMAN: Well, that is what the
12 Board is looking at. Should the Board impose a
13 condition of approval--

14 MS. MURPHY: And I understand that.

15 THE CHAIRMAN: --to this class EA, for
16 instance, to require the Ministry to apprise itself of
17 that information.

18 MS. MURPHY: And I understand that is
19 what my friend is asking you to think about it and let
20 him go ahead and do that. But I'm telling you what the
21 situation is right now.

22 THE CHAIRMAN: Okay.

23 MR. EDWARDS: Thank you.

24 THE CHAIRMAN: Is that what you are
25 asking us to do, Mr. Edwards?

1 MR. EDWARDS: Yes, it is, Mr. Chairman.
2 I'm also inviting the Board to consider the present
3 wording of the statute which, in my respectful view,
4 does require that because the words -- I would
5 certainly suggest that one could interpret the words
6 'permission to cut timber on a licensed area' as
7 requiring the consent in writing, and obvious in that
8 case the identity of the permittee would have to be
9 known.

10 Those are my questions in that area.

11 MRS. KOVEN: Excuse me, Mr. Edwards. I
12 just had a quick comment.

13 MR. EDWARDS: Yes.

14 MRS. KOVEN: And it seems to me - and
15 this is obviously too simple - but it seems to me if I
16 were in the position of a tourist operator who wanted
17 to know the identity of a contractor I would make two
18 phone calls; I would call the Ministry of the
19 Environment and say who is the holder of that piece of
20 land, and then I would call the company and get the
21 name that way.

22 MR. EDWARDS: If the company was prepared
23 to release it.

24 MRS. KOVEN: Exactly.

25 MS. MURPHY: If the company isn't

1 prepared to release it, then you would act against the
2 company and the company would supposedly, I would
3 suggest in the normal course say: I didn't do it, he
4 did.

5 THE CHAIRMAN: Now, but if there was a
6 condition that the Ministry apprise itself of that
7 information, they could then either work it into their
8 FMA agreements as a term and condition of the agreement
9 that that kind of information be put forward, or the
10 Ministry could make whatever other enquiries it wanted.

11 And I'm sure if the Ministry wanted the
12 information, most FMA holders would probably be
13 forthcoming with it, simply because of the practical
14 realities that the FMA holder has to get along with the
15 Ministry in a variety of circumstances in the future.

16 MRS. KOVEN: But isn't it another
17 practical consideration how far ahead the FMA holder
18 knows who his contractors are going to be?

19 THE CHAIRMAN: No, after they have
20 obviously let the contracts.

21 MRS. KOVEN: Well, in effect, it would be
22 retrospective because you would be looking five years
23 past rather than --

24 MS. MURPHY: See, not to belabour this,
25 but I think what happened is, Mrs. Koven pointed out a

1 very practical and normal way these things are done,
2 and I was responding to that.

3 I think I should also ask you to keep in
4 mind that when we are talking licensees, we are not
5 just talking FMA holders, right.

6 THE CHAIRMAN: We know that.

7 MS. MURPHY: There are a lot of
8 licensees, there are a lot of kinds of licensees and so
9 you have to keep in mind we are talking about a lot of
10 different people and also a lot of different
11 activities.

12 THE CHAIRMAN: Okay. Ms. Murphy, I think
13 it's fair to say - we covered this at the beginning of
14 this examination - that the interpretation of 18(1) is
15 the interpretation placed on it by the Ministry
16 obviously.

17 Now, given the wording, given the fact
18 there is no jurisprudence on it, it certainly could be
19 read a different way, it could be read that it requires
20 Minister's approval. If it were read in that fashion,
21 that kind of information would be available, obviously
22 the Ministry would have that information if the
23 Minister were required to give approval. I mean, that
24 is one option.

25 There is other options such as a term of

1 an FMA agreement or some understanding in some way that
2 when the Ministry requires that information it will be
3 forthcoming from the FMA holder either as a -- maybe
4 not an express term of the licence or the agreement,
5 but that would probably be the best way to ensure it;
6 it could also be incorporated as a term and condition
7 if the Board so chose in its approval, and the manner
8 in which the Ministry carried out that term and
9 condition in order to comply could be up to them.

10 But Mr. Edwards is posing a problem that
11 is out there of finding out some basic information as
12 to who carried out the activity and is indicating that
13 that is sometimes difficult to ascertain. It is
14 activities being carried out on Crown land and, as a
15 result, should the public at large be put to an
16 investigative task to ascertain that kind of
17 information of activities being carried out on Crown
18 lands. That is the question before the Board.

19 And I take it, Mr. Edwards, you are
20 inviting the Board to consider what it might want to do
21 in that light, if anything?

22 MR. EDWARDS: Exactly, Mr. Chairman.

23 MR. CASSIDY: And, Mr. Chairman, if we
24 could make two comments on that, because it may be some
25 time before we hear argument on this issue.

1 THE CHAIRMAN: I'm sure there will be
2 argument and I'm sure there will be a contrary view put
3 forward.

4 MR. CASSIDY: Well, I will reserve my
5 arguments and the nature of them to the end, but you
6 may hear evidence with respect to the practical
7 difficulties such as some that Mrs. Koven has
8 indicated.

9 But further, it is my client's position
10 that we would look forward to hearing evidence from Mr.
11 Edwards as to this being a problem because I'm sure, as
12 you appreciate Mr. Chairman, and as I'm sure Mrs. Koven
13 and Mr. Martel are learning, the niceties of law is
14 that counsel cannot give evidence, and before you
15 consider this to be a problem you have to hear some
16 evidence; that is, people who are on the stand subject
17 to cross-examination by all of my friends and myself
18 before you think this is a problem, in our view.

19 THE CHAIRMAN: Well, presumably Mr.
20 Edwards in his own case--

21 MR. CASSIDY: Exactly.

22 THE CHAIRMAN: If he's going to be asking
23 the Board to depart from the present practice, will be
24 required, like anybody else, to support a request for
25 the Board to depart from that practice.

1 In other words, with respect to
2 everything, Mr. Edwards, some need for altering a
3 practice, particularly when there is onerous
4 consequences of doing so, should be supportable.

5 MR. EDWARDS: Mr. Chairman, I had advised
6 the Board that my questions and answers would take two
7 hours, I think they still will, but--

8 THE CHAIRMAN: Let's go.

9 MR. EDWARDS: --I may have to revise the
10 overall estimate of the time which my examination will
11 consume, but I am definitely prepared to move to
12 another area at this stage.

13 Q. Mr. Straight, I believe you prepared
14 the material relating to the tourism monitoring
15 strategy or at least you had something to do with it,
16 sir. I'm referring particularly to page 504 and
17 following of the witness statement.

18 MR. STRAIGHT: A. What was that page
19 again, Mr. Edwards?

20 Q. 504, sir.

21 A. Okay, thank you. Yes, I have it.

22 Q. Yes, sir. On the first page there,
23 504, the sentence about halfway through the paragraph
24 reads as follows:

25 "The general consensus is that the

1 effects monitoring program should at the
2 minimum meet the requirements stipulated
3 by the Timber Management Class EA."

4 Now, can you point, sir, to what that
5 refers in the Class EA? Do you have that?

6 A. Let me get my document. I believe
7 the basic intent of that sentence would be covered with
8 the material on page 196 of the Class Environmental
9 Assessment for Timber Management on Crown Lands in
10 Ontario amended June, '87.

11 Q. That is page 196?

12 A. That's correct, about halfway down
13 that page.

14 Q. You are talking about effects and
15 effectiveness monitoring. Reads as follows:

16 "...is intended to assess the short and
17 long-term direct and indirect effects of
18 timber management operations."

19 A. That's right. And:

20 "Effectiveness monitoring is intended to
21 assess the effectiveness of timber
22 management prescriptions and practices in
23 terms of achieving the purpose of the
24 undertaking and with specific reference
25 to tourism, the prevention, minimization

1 and mitigation of adverse environmental
2 effects."

3 And as I can recall in our discussions of
4 this particular subject, it to some degree led to
5 consideration of and some discussion on the kinds of
6 alternative effects and effectiveness monitoring
7 mechanisms that -- or programs that we might institute.

8 It was assumed in that particular working
9 group that we dealt with here that as a minimum to meet
10 our objectives, which was to describe how effective we
11 were in achieving that prevention and minimization of
12 effect, that we at least be able to answer the
13 question: Were we effective in doing it, either yes or
14 no.

15 Q. I see. Now, sir, it would seem that
16 the proposal which is set out for the plan to -- or the
17 tourism effects monitoring program, which I believe is
18 referred to at page 541 and following, the proposal
19 really is a 10-year long program consisting of a
20 questionnaire?

21 A. That is -- just let me get the 541.
22 541 is a summary of the program, that's correct, and
23 part of that program delivery includes the use of a
24 questionnaire as one of the delivery mechanisms of
25 results.

1 Q. Sir, I'm interested by the statement
2 at the first sentence on page 541 which reads as
3 follows:

4 "The Timber Management Guidelines for the
5 Protection of Tourism Values were
6 developed by representatives of the
7 tourism and forest products industries."

8 Is that entirely correct, or is that only
9 partly correct?

10 A. No, that statement is correct.

11 Q. Did the MNR have anything to do with
12 it?

13 A. Well, my understanding of it was --
14 and you've heard evidence on that by Mr. Pyzer, I
15 believe and in previous panels, and also by Mr. Clark
16 suggesting how those were developed.

17 What my understanding of their testimony
18 was that both MTR and MNR were present while the
19 tourist/industry -- representatives of the tourist
20 industry and representatives of the forest industry,
21 with the assistance of a consultant/facilitator were
22 responsible for putting that guideline package
23 together, that both MTR representatives, of which there
24 was only one in my understanding, and similarly for MNR
25 of which there was only one - and that was Mr. Pyzer -

1 were there to act in the clarification and a sort of a
2 resource support role.

3 And that is my understanding and I
4 believe that is consistent with the evidence that has
5 been previously presented to the Board.

6 Q. The MNR, the MTR and this outside
7 consultant were part of the process then?

8 THE CHAIRMAN: Well, they would
9 ultimately be part of the process, Mr. Edwards, because
10 surely the guidelines to be mandatory and effective
11 would have to be approved by one or both ministries.
12 I'm sure that's the case.

13 MR. EDWARDS: I'm just a little
14 concerned. The statement suggests that it was solely
15 the tourism and forest products industries that
16 developed them.

17 Q. And I think, Mr. Straight, you'd
18 agree that there was other input into that; was there
19 not?

20 MR. STRAIGHT: A. I wasn't personally
21 there so I don't know exactly how that other input was
22 used.

23 THE CHAIRMAN: But it's a government
24 guideline, surely you can assume that it's not just a
25 rubber stamp.

1 MR. EDWARDS: That is what I assume, yes.

2 Q. Sir, at page 523 of this document
3 there is some direction about the questionnaire design.
4 And before I go to that, I will ask you a more general
5 question. Who is the author of this tourism monitoring
6 strategy document?

7 MR. STRAIGHT: A. The one that is
8 contained on page 523?

9 Q. Pages 504 and following. Who is the
10 author of this section?

11 A. The actual writing was done by Mr.
12 Lorne Gregg who was the ESSA consultant in this
13 particular instance and the people who participated are
14 listed on page 504, at the start of that.

15 Q. And that included you?

16 A. That included myself, yes.

17 Q. All right. Now, I am just interested
18 in the statement at page 523 of the witness statement
19 about questionnaire design:

20 "This task involves initial design of the
21 questionnaire, field testing, evaluation
22 and revision. It is recommended that the
23 questionnaire be kept deliberately short
24 and that it not specifically mention
25 timber management."

1 I would like you, sir, to tell us why it
2 should not be mentioning timber management?

3 A. I just want to quickly refer to
4 another section of this report, if I could find it,
5 before I answer your question. I would give you a
6 general concern -- a general consideration on my
7 understanding of why that's there, and that is that we
8 are aware of potential bias in the response occurring
9 as a result of people assuming that when they are
10 answering questions on a questionnaire, if they have a
11 sense for what the purpose is, that you won't get a
12 totally objective response back.

13 It's not to hide timber management from
14 being on the questionnaire, but simply in an attempt to
15 ensure that the response from the tourist, that would
16 be the subject of this particular questionnaire, was
17 not biased in any particular way, and there is more
18 discussion of that particular matter on some of the
19 basic -- when we identified some of the problems or
20 difficulties that we might encounter in conducting the
21 project and how we would deal with that, which is
22 explained on page 520 of that same report.

23 Q. Is the questionnaire solely for
24 tourists?

25 A. This particular questionnaire is

1 solely for tourists, that's right.

2 Q. That clears that up, sir, thank you.

3 Now, this is a lengthy process, sir, that is proposed
4 and it is suggested at page 526 under the heading of
5 Reporting as follows:

6 "On an annual basis..."

7 That's the second paragraph under the
8 heading Reporting.

9 A. Yes.

10 Q. "On an annual basis, reporting of the
11 results of the analysis suggested above
12 should be made to all personnel
13 responsible for the development of TMPs."

14 Now, assuming that that might at some
15 stage include tourist outfitters, I would be happy to
16 adopt that, but given the present component of the
17 timber management planning team, sir, do you not also
18 see that the reporting back should be made to the
19 tourist industry as well as people responsible for the
20 production of TMPs?

21 A. Just let me read that paragraph to
22 make sure I give you -- I understand completely the
23 context in which that is expressed.

24 MR. GORDON: A. Maybe I can help you,
25 Mr. Straight. I am sure you are aware that we are

1 setting up a stakeholder committee to help us go
2 through this project and obviously that stakeholder
3 committee will be providing advice on the questionnaire
4 and to the final study design, and that stakeholder
5 committee will also be making recommendations as to
6 what improvements may be necessary in the guidelines.

7 And I'm sure you are aware that NOTOA was
8 nominated by letter on November 10th, 1989. Mr. Bill
9 Chambers will be sitting on that stakeholder committee.
10 There is no question we will be involving him.

11 Q. Yes, sir. But would you then be
12 reporting the results of the analysis to him?

13 A. Any information we would have
14 available at that point in time we would report to him.

15 Q. Thank you.

16 MR. STRAIGHT: A. And I think that
17 that's basically what -- as Mr. Gordon has explained,
18 the attempt of reporting results quickly, as we
19 explained in our lead evidence, was the intent to be
20 adaptable in terms of ensuring that the program, both
21 the program itself, the research program in this
22 particular situation and the guidelines where it would
23 be -- could be adapted to ensure that the most
24 appropriate practices were being applied.

25 Q. Mr. Straight, at page 527 of the

1 witness statement - I will continue later with this
2 tourism document - in the first paragraph on the top,
3 the first full paragraph suggests that funding for the
4 initial design phase could have been made available in
5 fiscal '87 and '88 and indicated that it should be
6 feasible to begin the initial program in the summer of
7 '88. Can we presume that the funding did not become
8 available?

9 A. I think that's a fair assumption.
10 The funding is -- by the time the report, this
11 particular report was developed and followed up in
12 terms of receiving Ministry approval for the program,
13 you will see that the status of the update of the
14 project that we presented to you or made available to
15 you earlier suggests that funding was available this
16 year and hiring for the project leader in this
17 particular instance is current -- is ongoing at this
18 point in time.

19 Q. Thank you. If I could switch please
20 to some information which arises out of the
21 interrogatories filed by the Ministry of the
22 Environment. The first one is their Interrogatory No.
23 2 which is a previous exhibit, although I do not know
24 the exact exhibit number.

25 THE CHAIRMAN: Are you going to hand out

1 a new one?

2 MR. EDWARDS: I don't have a new one to
3 file.

4 THE CHAIRMAN: Okay.

5 MS. BLASTORAH: It would be in 926, Mr.
6 Chairman.

7 THE CHAIRMAN: Thank you.

8 MR. EDWARDS: Q. Question No. 2 in the
9 Ministry of the Environment interrogatories. Can the
10 panel advise me which member of the panel would be most
11 comfortable in answering this question?

12 MR. TWORZYANSKI: A. It would depend on
13 the question.

14 Q. It relates to the information
15 contained in the interrogatory.

16 A. I will take an attempt at it.

17 Q. The interrogatory states that:

18 "Non-compliance with obligations can
19 result in a decision to delay extension
20 of the agreement pending performance of
21 the obligations in default within a
22 specified time period."

23 That's a quotation I believe from the
24 witness statement. The question was:

25 "Since the introduction of FMAs, how many

1 delays of extension and termination of
2 agreements have occurred on the basis of
3 non-compliance. Please name the
4 management units involved?"

5 The answer indicates that:

6 "One delay of extension for
7 non-compliance occurred with Great West
8 Timber Limited, Black River Forest
9 agreement No. 800."

10 The management unit was the Black River
11 Forest. Has that extension taken place, I mean, has
12 the delay ended?

13 A. My understanding is that a
14 recommendation has been made to have that delay ended
15 and for extension to take place, yes.

16 Q. And has the agreement yet been
17 signed?

18 A. I would have to find out an answer to
19 that specific question. As to whether the
20 documentation and the paperwork has been duly
21 concluded, I don't know.

22 THE CHAIRMAN: What turns on that, Mr.
23 Edwards?

24 MR. EDWARDS: Well, I am interested --
25 the question is, Mr. Chairman: What were the concerns

1 which led to the delay in extension for non-compliance,
2 what specifically caused the Ministry to take that step
3 in this one particular case?

4 MR. TWORZYANSKI: My understanding is
5 that the concern hinged around the assignment of
6 responsibilities under the FMA agreement to another
7 party.

8 MS. MURPHY: I just might be able to
9 help. I don't think the witness would be able take it
10 much farther. As I understand it, the situation in
11 that case is described in an exhibit that was
12 previously filed, it was the FMA review for that
13 particular forest. I can't recall right now what the
14 exhibit number is, but I will locate it and let you
15 know.

16 MR. EDWARDS: I believe that's already
17 been introduced, Mr. Chairman.

18 MR. TWORZYANSKI: That situation is
19 described in the FMA review for that particular
20 agreement.

21 MR. EDWARDS: I will defer to that
22 document, perhaps nothing turns on it.

23 Q. If I could refer, however, to
24 Ministry of the Environment Interrogatory No. 14 which
25 has not been filed, and I have copies for the Board and

1 for the parties.

2 MR. CASSIDY: I believe that exhibit, Mr.
3 Chairman, is probably Exhibit 31 which is the second
4 five-year review of the FMA, 1981-1986, filed in Panel
5 1. The volume number is Volume 9 and it is page 1477
6 where that was filed. I think there was a discussion
7 at that time around that transcript reference.

8 THE CHAIRMAN: Thank you, Mr. Cassidy.

9 MR. EDWARDS: Mr. Chairman, I seem to be
10 a bit short of these copies. (handed)

11 THE CHAIRMAN: Exhibit 957.

12 ---EXHIBIT NO. 957: MOE Interrogatory No. 14.

13 MR. EDWARDS: That was Exhibit 957, Mr.
14 Chairman?

15 THE CHAIRMAN: That's correct.

16 MR. EDWARDS: Yes.

17 Q. Sir, the question relates to a
18 statement at page 156 of the witness panel and, again,
19 can I presume I should ask this question of Mr.
20 Tworzyanski. It relates to the Terrace Bay District
21 and regeneration agreements.

22 MR. GORDON: A. I was in Terrace Bay for
23 a while. I can't recall if I was there when this
24 exactly happened, but perhaps you could try me first.

25 Q. Yes. Thank you, Mr. Gordon.

1 At that time the Terrace Bay District
2 contacted the forest companies and discussed utilizing
3 regeneration agreements. Their response at that time
4 was negative:

5 "We will continue to negotiate with the
6 forest companies in an attempt to involve
7 them in the regeneration program.

8 Please describe the attempts that have
9 been made since the preparation of this
10 memorandum to attempt to involve forest
11 companies in the regeneration program?"

12 Do you have the answer there with you,
13 Mr. Gordon?

14 A. Yes, I am looking at MOE No. 14?

15 Q. Right.

16 A. And I believe the answer is fairly
17 clear. Do you want me to read it? I am not sure what
18 you are looking for.

19 Q. I am interesting in finding out which
20 companies were involved. It doesn't identify it, it
21 says it is not an FMA holder. Do you know who that
22 would have been, sir?

23 MR. CASSIDY: Is it relevant, Mr.
24 Chairman, to know who that company was for the purposes
25 of you making a decision?

1 THE CHAIRMAN: What is the relevance of
2 identifying who it is?

3 MR. EDWARDS: Well, I am just concerned,
4 Mr. Chairman, as to why there was not an
5 identification. It says it is not a reference to an
6 FMA holder. Are they able to identify the person? It
7 seems relevant to me when we are talking about plans,
8 this is an example of an attempt to involve forest
9 companies in the regeneration program.

10 THE CHAIRMAN: Well, they say in the
11 answer:

12 "The district contacted the company."
13 Presumably they had to contact something.

14 MR. EDWARDS: Well, yes, but the other
15 thing -- the witness statement says:

16 "The Terrace Bay District contacted
17 forest companies..."

18 And the answer refers to the contacting
19 of a single company.

20 Q. Now, did they neglect to contact all
21 of the companies that they could have contacted to do
22 this?

23 MR. GORDON: A. I am not 100 per cent
24 sure which company was contacted and I think it would
25 be premature for me to throw out a name if I am not 100

1 per cent sure of the name.

2 Q. It was not an FMA holder, would it
3 have been what is often referred to as a third party or
4 a contractor?

5 A. Not necessarily, no.

6 Q. Do you know if it was a licensee?

7 A. It was a licensee.

8 Q. Thank you. With respect to
9 contractors, are there any differences in the
10 obligations of the contractors on Crown and company
11 units?

12 I mean, I am just intrigued, sir, why
13 that particular person was asked to do something and if
14 that particular person was asked to do something he
15 apparently failed to do so. I am just wondering, if
16 the MNR has tools to deal with that lack of response,
17 are they identical in Crown units and company units?

18 A. I believe you are just going a little
19 too quick for me. I am not following you. Could you
20 perhaps try again, please?

21 Q. Is there any difference in the
22 ability of the MNR to compel compliance by contractors
23 by -- for example, if one wished to have a forest
24 company involved in the regeneration program, as was
25 the case on the Big Pic Management Unit, is it more

1 difficult on an FMA or FMU to get people involved in
2 the regeneration?

3 THE CHAIRMAN: No, Mr. Edwards, if it is
4 an FMA unit pursuant to an agreement, as the Board
5 understands, it is written into the agreement that it
6 is the FMA holder's responsibility for regeneration, it
7 is a contractual provision.

8 If your question is: Does the Ministry
9 have different control over contractors on non-FMA
10 company units as opposed to Crown units, that's a
11 different question.

12 MR. EDWARDS: Perhaps I will step back,
13 Mr. Chairman, and try to ask it again slower. It is a
14 bit confusing, I apologize for that.

15 Q. Sir, if the Ministry wished to
16 utilize a regeneration agreement on a forest management
17 unit and the company response was negative, what tools
18 does it have available to it to encourage the company
19 along?

20 MR. GORDON: A. Beyond discussion, I
21 believe the company's participation in a regeneration
22 agreement is optional.

23 THE CHAIRMAN: Because the primary
24 responsibility for regeneration is the Crown's; is that
25 correct?

1 MR. GORDON: That's correct.

2 THE CHAIRMAN: Except for FMA units where
3 it has been transferred to the FMA holder?

4 MR. GORDON: Exactly, Mr. Chairman.

5 MR. MARTEL: On a company unit as well?

6 MR. GORDON: That's correct.

7 MR. MARTEL: As distinct from the Crown
8 unit itself?

9 MR. GORDON: Right. Yes, we have got
10 three --

11 MR. MARTEL: Right. And I am talking
12 about the one in the memo.

13 MR. GORDON: Yes.

14 MR. MARTEL: Okay.

15 MR. GORDON: Yes, that's our
16 responsibility.

17 MR. MARTEL: That's still your
18 responsibility?

19 MR. GORDON: Yes.

20 MR. MARTEL: And if they choose to opt
21 out they can opt out?

22 MR. GORDON: That's correct. They can
23 choose not to sign a regeneration agreement with us,
24 that's correct.

25 MR. MARTEL: You would regenerate it, you

1 would have to hire people to do that?

2 MR. GORDON: That's right. It is our
3 responsibility to carry out the renewal projects.
4 Whether we would hire people directly to work for MNR
5 or we would sign a contract with someone to deliver
6 that part of the program.

7 MR. MARTEL: Thank you.

8 MR. EDWARDS: Q. Sir, now just so I -- I
9 think I have one more question here. The forest
10 company, which is not the FMA holder, is approached --

11 MR. GORDON: A. I just want to make one
12 thing clear. The reason we are talking about the
13 forest company that is not the FMA holder is because we
14 are not on an FMA unit, so that's why we are not
15 talking about an FMA company here at all. We are on a
16 different type of unit where there is no such thing as
17 an FMA holder. We are on a company unit.

18 Q. So the Big Pic is a company unit?

19 A. That's correct.

20 Q. And the companies have the option of
21 participating in regeneration agreements or not?

22 A. They have that option, yes.

23 Q. I see.

24 A. And more technically correct, the
25 licensee has that option.

1 Q. When you contacted the companies to
2 encourage them to involve themselves in the
3 regeneration program, do you have any tools of
4 persuasion?

5 THE CHAIRMAN: I think he indicated, Mr.
6 Edwards, that it is the company's option. If they
7 don't wish to participate, we understood your evidence
8 to be, that you can't penalize them for not doing so.

9 MR. GORDON: That's correct.

10 THE CHAIRMAN: It is your responsibility
11 to regenerate on those units?

12 MR. GORDON: That's correct.

13 MR. MARTEL: Are these by and large
14 smaller operations as opposed to, let's say, some of
15 the bigger operators, or are there some of the big
16 operators still out there who don't get involved that
17 might not be part of an FMA?

18 MR. GORDON: That's correct. It just
19 happens, yes, we are talking about a specific unit
20 here, the Big Pic Unit, where the prime licence holder
21 is James River/Marathon and so it is a very large
22 management unit. So you are correct that there are
23 still some large ones out there who aren't involved in
24 the FMA program.

25 MR. MARTEL: Why wouldn't they -- this is

1 a hypothetical question, why wouldn't they get involved
2 since it is a pretty healthy program, as I understood
3 it?

4 MR. TWORZYANSKI: But as you have also
5 heard, Mr. Martel, there is a funding concern about the
6 program and, in fact, we have been at 30 FMAs since
7 1977; we have not signed any new FMAs since that time.

8 MR. EDWARDS: Q. Panel, if I could
9 switch now to pages relating to the forest program
10 audit of the Terrace Bay District and that's found at
11 page 153 and following of the witness statement and, as
12 well, I just draw your attention to the fact that there
13 is the timber management audit for Terrace Bay District
14 which commences at page 114 and following as well.

15 MS. BLASTORAH: What page are we on?

16 MR. EDWARDS: 114 and following and then
17 there is some material relating to the same thing at
18 153 and following.

19 Q. Which panel member is most familiar
20 with this document? Would that be you, Mr. Gordon?

21 MR. GORDON: A. Yes.

22 Q. Were you there in 1987 or '88, sir?

23 A. Within the pages that you referenced
24 we are talking about two different audits.

25 Q. Yes.

1 A. The 1985 audit I was there and the
2 1988 audit I was not there.

3 Q. All right. Did you familiarize
4 yourself with the 1988 audit for the purpose of giving
5 evidence here?

6 A. I hope so.

7 Q. I see. Sir, I am interested
8 particularly in the recommendation No. 12 of the audit
9 team, it is referred to both at page 158 and earlier on
10 at page 130. The recommendation No. 12 reads as
11 follows:

12 "It is recommended that interim DCLs
13 will have to be drastically reduced..."

14 I am sorry?

15 THE CHAIRMAN: Sorry, I just coughed.

16 Excuse me.

17 MR. EDWARDS: Coughed.

18 MR. CASSIDY: You get all choked up about
19 these things after a while.

20 MR. EDWARDS: Q. "It is recommended that
21 interim DCLs will have to be drastically
22 reduced or eliminated altogether."

23 You are familiar with that
24 recommendation, sir?

25 MR. GORDON: A. Yes, I am.

1 Q. Had there been a problem with the
2 interim DCLs being used when there was no approved plan
3 in place?

4 A. No, not to my knowledge.

5 Q. No. What was the problem with
6 interim DCLs which required their drastic reduction or
7 elimination in the Terrace Bay District at that time?

8 A. Basically the situation we're
9 referring to here is we have an Order-in-Council
10 licence pending and it hasn't been finally issued and
11 we are approaching year start, April 1st, is an
12 approved timber management plan in place that we know
13 that we are going to get an Order-in-Council licence.

14 It has gone so far in the approval
15 process in Toronto but it hasn't gone through all the
16 final loops, and so to enable the company to begin
17 cutting as per the approved plan and annual work
18 schedule, we have the authority to issue interim DCLs.
19 And what the audit team is saying is, issue as few of
20 them as necessary.

21 And why would we be late in getting the
22 licence out, the Order-in-Council licence out? It
23 could be a number of reasons, it could be -- and I am
24 not suggesting that it is one of these, I don't know
25 the details, it will be one of these or a combination

1 of these.

2 The application by the future licensee
3 may be late, the approval process within MNR may be
4 slower than it should have been and, therefore, the
5 licence is not ready by April 1st. So to enable that
6 licensee and the people who work for that licensee to
7 work as of April 1st, we issue interim DCLs. As soon
8 as the major licence is ready, we cancel those interim
9 DCLs and we control that operation through the major
10 licence that comes from Toronto.

11 Q. Would you agree that the unit
12 operated on interim DCLs for a period of time in 87/88?

13 THE CHAIRMAN: Do you mean during that
14 year or that time period there were DCLs issued, or the
15 whole unit operated on DCLs?

16 MR. EDWARDS: My understanding is that -
17 and I do not know for sure, which is why I am asking
18 the question - my understanding, Mr. Chairman, is there
19 were interim DCLs issued. My further understanding is
20 that it was anticipated that there would be only one
21 operator on the unit, and I am interested in knowing
22 for how long the interim DCLs were permitted to exist.

23 MR. GORDON: Okay. If I could direct the
24 Board to page 130 of the panel statement. If you look
25 down at the bottom of the page, immediately above

1 recommendation No. 12, we are talking about 28 interim
2 DCLs and 26 were issued to one company and they were
3 between April 6th and 11th, right at the very beginning
4 of the fiscal year, and then the licence came through
5 from Toronto and took over -- the major licence took
6 over on April 14th.

7 MR. EDWARDS: Q. And that's to 686860
8 Ontario Limited?

9 MR. GORDON: A. That's correct.

10 Q. And the...

11 A. I just want to make this clear to the
12 Board. What we are trying to do here with these
13 licences is not circumvent anything, what we are trying
14 to do is allow the people who want to go cut wood to go
15 cut wood, and that's all we are trying to do.

16 Q. Sir, I am reading from a page in the
17 Big Pic Management Plan, the four volumes of which are
18 filed in the reading room, two of them here on my desk.

19 I would ask if you are familiar with this
20 information. This is for the annual work schedule for
21 the 87/88 season. It states as follows:

22 "All operations will be conducted under a
23 third party Order-in-Council licence
24 issued to 686860 Ontario Limited. A
25 third party agreement has been forwarded

1 previously to the Ministry for process."

2 So was it your understanding that that
3 company was to conduct all of the operations on the
4 unit in the annual work schedule of 87/88?

5 A. I really can't answer that question.
6 Just to make sure there is no confusion here, you are
7 talking about fiscal year 87/88?

8 Q. Yes.

9 A. And if you look from April 6th to
10 April 11th, 1988, is fiscal year 88/89.

11 Q. Yes.

12 A. So I still haven't grasped the point
13 yet.

14 Q. All right. Well, I am producing and
15 showing to you a series of interim DCL licences dated
16 March 27th, '87 -- all dated March 27th, '87 to 686860
17 Ontario Limited which...

18 THE CHAIRMAN: Where is this going, Mr.
19 Edwards, where are you taking us?

20 MR. EDWARDS: Mr. Chairman, I am
21 concerned about how much the DCL process was used to
22 allow operations in the absence of a licence.

23 One of the reasons is in Panel 15 I was
24 given the answer -- the assurance that DCLs were no
25 more than 160 acres and that it was a policy that they

1 not be of a value greater than \$10,000. And I think
2 the face of these documents will suggest that that is
3 not what happened in the Terrace Bay District, and I am
4 just concerned about that, which is a legitimate
5 concern.

6 (handed)

7 THE CHAIRMAN: Thank you. Shall we
8 exhibit these as Exhibit 958A, B and C?

9 MS. MURPHY: Is there a copy for the
10 panel?

11 THE CHAIRMAN: Mr. Edwards, we are going
12 to mark the one which states in the box at the top
13 right, Geraldton 22, Exhibit 958A.

14 MR. EDWARDS: Mr. Chairman, there is a
15 number at the bottom of the page, numbers 37, 38 and
16 39.

17 THE CHAIRMAN: All right, very well. A,
18 B and C then, 958.

19 ---EXHIBIT NO. 958: Interim DCL licences dated March
20 27th, 1987 issued to 686860
Ontario Limited (A-C).

21 MR. EDWARDS: I am sorry, what was the
22 number, please?

23 THE CHAIRMAN: 958.

24 MR. EDWARDS: Q. Now, sir, if you were
25 to cut the timber which is authorized by these three

1 licences -- these are the only three which I have, I do
2 not know, sir, whether there are more or not.

3 If you were to cut the timber authorized
4 by these, would that be of value greater than \$10,000
5 or less than \$10,000?

6 MR. GORDON: A. It would be greater.

7 Q. And perhaps you weren't here for
8 Panel 15, but I had a question of Mr. Kennedy which was
9 at Volume 147, page 25428, commencing at line 11:

10 "Q. I just have a final question, sir,
11 going back again to the use of district
12 cutting licences. You've indicated there
13 is an area limitation on the DCL which is
14 set out in a section of the Crown Timber
15 Act and there is a \$10,000 monetary limit
16 as well. Where is that set out? Can
17 anybody on the panel address that,
18 please?

19 MR. KENENDY: A. I believe it is set out
20 in the Timber Sales bulletin with regards
21 to the licensing procedures.

22 Q. I see. And how long has that Timber
23 Sales bulletin been in effect?

24 A. Well, there has been -- there
25 probably has been changes in the dollar

1 amount. It has been in effect at least
2 during my period of employment since
3 1977."

4 Now, sir, do you have any reason to
5 disagree with Mr. Kennedy's statement given under oath
6 in Panel 15?

7 A. I believe I agree with Mr. Kennedy
8 and that what he is making reference to is the normal
9 use of a district cutting licence. What we are talking
10 about here is an exceptional circumstance.

11 Q. Did the entire unit operate for a
12 period of time on district cutting licences?

13 A. I can't answer that because I don't
14 know if there was another licensee on the unit.

15 Q. Well, sir, I am producing and showing
16 to you the annual schedule of harvest area depletion by
17 licensee to be forecast and I will invite you to
18 consider that, it is Table 5.2, and two other pages
19 from the timber management plan.

20 (handed)

21 THE CHAIRMAN: Thank you. Exhibit 959.

22 ---EXHIBIT NO. 959: Annual schedule of harvest area
23 depletion by licensee (Table 5.2).

24 MR. EDWARDS: Q. Now, sir, if I could
25 invite you to read along with me, you will see that the

1 harvest area set out in Table 5.2 shows the total
2 available and expected to be utilized. 686860 Ontario
3 Limited, the total available is 10,599 hectares, the
4 expected utilization by the named company is 690.

5 But I direct your attention to the
6 following page which is the text, the third paragraph
7 from the bottom, which indicates the annual work
8 schedule proposal for the unit is as follows:

9 "All operations will be conducted under a
10 third party Order-in-Council licence
11 issued to 686860 Ontario Limited. A
12 third party agreement has been forwarded
13 previously to the Ministry for process."

14 So having that read that, sir, would you
15 presume there were other licensees on the area?

16 A. I would definitely not.

17 Q. Thank you. Now, did the unit
18 operate -- this forest management unit operate on
19 district cutting licences for a portion of time in
20 1987/88?

21 A. Based on evidence you have put in
22 front of me, the answer would be yes.

23 THE CHAIRMAN: So where is all this
24 leading?

25 MR. EDWARDS: Sir, we were given an

1 answer by Mr. Kennedy which was not qualified, although
2 he wasn't specifically asked to address this issue,
3 what are those exceptional where DCLs would be allowed
4 to take the place of the required licence.

5 THE CHAIRMAN: I think the witness
6 already responded, in cases where the plan has been
7 approved and the application sent in, it may not be
8 forthcoming by April 1st, the Ministry wants to allow
9 the cutting and the only way it can confer that
10 authority in the absence of the document from Queen's
11 Park is through a district cutting licence. Is that
12 not correct, Mr. Gordon?

13 MR. GORDON: That's correct. The way I
14 would interpret recommendation No. 12 is saying to one
15 or both of the parties, the Ministry or the company:
16 Pull up your socks, get your application in for the big
17 licence earlier so we don't have to issue interim DCLs
18 around April 1st. That's how I would interpret the
19 recommendation.

20 MR. EDWARDS: Q. Sir, is there any limit
21 of time that would be put on such an exceptional
22 circumstance? How long can this situation be allowed
23 to exist?

24 MR. GORDON: A. I'm not aware of any
25 limit, and the reason the limit should perhaps not be a

1 concern is we would only have authority from the region
2 in Toronto to issue interim DCLs if the large licence
3 from Toronto is almost ready to be issued and,
4 therefore, you would expect it to be issued in the very
5 near future. So, therefore, you would not expect to be
6 operating on interim DCLs for a long period of time.

7 THE CHAIRMAN: Would you be allowing
8 operations to take place without the assurance that the
9 main licence would be approved?

10 MR. GORDON: No, we cannot do that. We
11 cannot issue an interim DCL.

12 MR. EDWARDS: If I can just have a
13 moment, please, Mr. Chairman.

14 THE CHAIRMAN: Very well.

15 MR. EDWARDS: Q. Sir, since this was in
16 effect an exception to the statutory term of the Crown
17 Timber Act or at least the regulation as set out by Mr.
18 Kennedy.

19 MS. MURPHY: Which regulation?

20 MR. EDWARDS: I am talking about the
21 value of the timber to be cut.

22 MS. MURPHY: That's not regulation, the
23 Crown Timber Act speaks specifically to 160 acres.

24 MR. EDWARDS: Right. And, therefore,
25 several -- at least three licences with not greater

1 than 160 acres all issued to the same person, which has
2 just been introduced into evidence, and the previous
3 evidence of Mr. Kennedy was that the value to be cut
4 should not be greater than \$10,000.

5 Q. Now, sir, if there is an exception to
6 that, either the statutory requirement in spirit, at
7 least if three licences are issued when it's supposedly
8 160 acres or the value of the timber which could be
9 extracted, is that exception required to be reported to
10 anybody?

11 MR. GORDON: A. I cannot recall exactly
12 who gives approval when you want to issue interim DCLs.
13 I know when I did it we had to receive authority from
14 the regional director. Now, I cannot say if that is
15 the case in 1989.

16 Q. Do you know of any other obligation
17 to report that incidence of using a DCL which I see,
18 sir, with respect, as an exception to the requirement?

19 A. To what requirement?

20 Q. The requirements to the definition of
21 a DCL. If you are going to deviate from what is
22 suggested to be the norm for that, sir, are you
23 required to report that change to anybody?

24 THE CHAIRMAN: Mr. Edwards, we are just
25 having a little difficulty following along as to what

1 is the significance of this.

2 In other words, if the Ministry has
3 indicated that they will not issue DCLs until they are
4 in possession of information that a proper licence is
5 imminent, it will be issued shortly, and they have
6 decided in the circumstance that it is appropriate to
7 allow cutting in the absence of the main licence, what
8 is the significance of the fact that some units are
9 being carried out or some activities are being carried
10 on under DCLs in that interim period?

11 MR. EDWARDS: I guess the concern, Mr.
12 Chairman, is just how long is too long. Perhaps I can
13 ask the witness if he knows how long the activities
14 occurred on that unit before the licence was issued,
15 and then if he doesn't have that information available
16 perhaps --

17 THE CHAIRMAN: Well, we have some
18 indication that it was a few months.

19 MS. MURPHY: Nine days and three days.

20 MR. EDWARDS: No, no, I am talking about
21 those licences which I introduced are '87 licences.
22 The text speaks to 1988. So I am interested in what
23 happened in 87/88.

24 THE CHAIRMAN: All right. Can you give
25 us a ballpark figure as to normally how long would a

1 unit operate under DCL licences in a normal case?

2 MR. GORDON: If I was to give you a round
3 figure I would say the month of April.

4 THE CHAIRMAN: So roughly 30 days?

5 MR. GORDON: Yes.

6 THE CHAIRMAN: Now, there could be
7 exceptions to that which could be it take it longer?

8 MR. GORDON: Yes.

9 THE CHAIRMAN: Is it the intention that
10 activities should take place under DCLs for any
11 appreciable length of time in excess of a month?

12 MR. GORDON: It is not the intention, but
13 it may occur. But it is not to circumvent timber
14 management plans or the Crown Timber Act, the only
15 reason we do this is to facilitate the movement of
16 people into the bush so they can do something.

17 THE CHAIRMAN: Mr. Edwards, you are going
18 to have to convince us that there is some reason to
19 further explore this area.

20 MR. EDWARDS: Well, I am concerned just
21 that --

22 MS. MURPHY: If I just might, I haven't
23 objected, I've let my friend ask these questions.

24 In assessing the significance of these
25 questions, and whether he should go any farther in

1 asking, I would ask you to bear in mind two things:
2 One, the regulation I brought to your attention that
3 says that the issuing of a licence is not subject to
4 environmental assessment, No. 1; and, No. 2, that this
5 panel is purporting to be here to speak to monitoring.

6 MR. EDWARDS: Well, I had assumed that
7 one might want to monitor whether a lawful licence was
8 in effect.

9 THE CHAIRMAN: Well, we are --

10 MR. EDWARDS: Mr. Chairman, the concern I
11 have is set out at page 158, it is not clear, but the
12 document appears to suggest that this may have
13 continued on into the fall of 1987. Under the comments
14 where it says: "drastic reduction of interim DCLs", it
15 says as follows:

16 "During the fall of 1987, regional office
17 approved our long-term licence
18 strategy. They subsequently changed
19 this approval causing a delay in
20 receiving the necessary third party
21 agreements."

22 Now, it is not clear from that how long
23 it was before there was a licence in place.

24 THE CHAIRMAN: Okay. Suppose it was six
25 months in that particular case, so what?

1 MR. EDWARDS: Mr. Chairman, with respect,
2 I think there is some concern when the Ministry
3 witnesses testify under oath that they use these things
4 for values under \$10,000 and, you know, a small area.
5 For a period of time, and perhaps a significant period
6 of time, if an area is allowed to operate unlicensed,
7 in effect, save and except through the DCL process
8 which --

9 THE CHAIRMAN: Yes, but, Mr. Edwards,
10 with respect, the DCL licensing process is a licence;
11 it is not the main licence, it is a lawful authority
12 for activity to take place. I mean, that's a far cry
13 from someone going into the bush with no authority and
14 then carrying out activities.

15 This is something that is managed and
16 controlled by MNR in terms of their issuance and the
17 Ministry has in fact indicated, at least there is no
18 evidence before us, that activity are being carried out
19 in the absence of a licence. It may not be the main
20 licence, but there is an interim licensing procedure
21 for these cases.

22 MR. EDWARDS: I accept that, Mr.
23 Chairman. I am going to move on from this point.

24 But the point I am trying to make is that
25 if a number of these things are packaged together, so

1 that you've got a lot more than 160 acres, it seems
2 that the spirit and perhaps even the letter of the law
3 is being violated and I think the issue of the
4 desirable zeal with which the MNR enforces its own
5 legislation is a matter of concern.

6 Mr. Chairman, I propose, if I may, to
7 move to my final area. And just a couple of questions
8 which arose out of some of the examination of Mr.
9 Lindgren previously.

10 Q. I think, Mr. Cary, the answer to this
11 will be a simple one, but I just wanted to confirm it.
12 You indicated that a violation of a prescription would
13 result in the Ministry taking action during your
14 cross-examination by Mr. Lindgren. By that do you
15 include the laying of a charge, that is to say, it's an
16 offence?

17 MR. CARY: A. Assessing a penalty.

18 Q. Yes. We were talking in terms of
19 suspending licences or things like that, but--

20 A. Yes.

21 Q. --you agree that the violation of a
22 prescription can result in a charge prosecuted in
23 Provincial Offences Court which the court may impose a
24 fine?

25 A. Not currently.

1 Q. Not at the present, but we were
2 talking in the future.

3 A. That could happen.

4 Q. That is the proposal?

5 A. Yes.

6 Q. Yes. Thank you.

7 THE CHAIRMAN: It may even result in a
8 charge now under the environmental legislation.

9 MR. EDWARDS: Yes.

10 Q. Dr. Osborn, a brief question for you,
11 sir. Mr. Lindgren asked you a question with respect to
12 the sustained yield concept.

13 Is it possible, sir, in a timber
14 management plan in the report of past operations simply
15 to have a chart, one page, which states the net cubic
16 metres of fiber that have been removed from the unit
17 and the net cubic metres of fiber that have been added
18 to the unit; at least obviously the latter would be an
19 estimate. I mean, it is possible to do that?

20 DR. OSBORN: A. Yes.

21 Q. Why is that not proposed to be done?
22 It would be delightfully simple to understand at least.

23 A. In concept or in practice, it would
24 be delightfully simple?

25 Q. It would be delightfully simple to

1 read, sir, but why is that not done if it is possible
2 to do it?

3 A. Ah! You have just answered your own
4 question. The difficulty in so doing and in the state
5 of the forest -- no, in the annual report, the
6 provincial annual report where we describe balance --

7 Q. I am sorry describe...?

8 A. Balance.

9 Q. Yes.

10 A. A section within the provincial
11 annual report, I describe the difficulty is whereby one
12 can show exactly what it is you are asking about and
13 what measures may be appropriate, growth being one of
14 them, and the difficulty was explained in obtaining of
15 the data of the growth.

16 Q. Is that difficult or impossible?

17 A. Difficult.

18 Q. All right.

19 A. Nothing is impossible.

20 MR. EDWARDS: Mr. Chairman, there is one
21 other matter I wish to ask a question about and then I
22 am finished.

23 Q. Exhibit 918 was referred to. Who was
24 the witness who was testifying to that, that's the
25 report on the forest management agreements.

1 Mr. Tworzyanski?

2 DR. MacLEAN: A. Legislation?

3 MS. SEABORN: Exhibit 940.

4 Q. I'm sorry, Exhibit 940. That was the
5 document that was authored in part by Mr. Hynard.

6 MR. TWORZYANSKI: A. I believe you are
7 referring to Exhibit 940, Report of Task Force on
8 Forest Management Agreements; is that the document?

9 Q. Yes, that's the document, sir. Would
10 that document be considered a publication?

11 A. Not in the proper sense. My
12 understanding of the Ministry publication is a document
13 that's published through formal channels and has a
14 document number assigned to it and is available through
15 both our public information centre and through the
16 Government Bookstore. That would be a publication in
17 my understanding.

18 Q. All right. So I noticed that Mr.
19 Hynard did not list it in his list of publications in
20 his curriculum vitae for Panel 10, and it would be for
21 that reason, sir, that he didn't list it?

22 A. You would really have to ask Mr.
23 Hynard that question.

24 MS. MURPHY: The fact that Mr. Hynard did
25 work on this task force is referred to in his

1 curriculum vitae. I can't recall when he put together
2 his curriculum vitae.

3 THE CHAIRMAN: I assume he doesn't get
4 any royalties on this document.

5 MR. EDWARDS: It is not a hot seller, I
6 understand, Mr. Chairman. Thank you members of the
7 panel. Those are my questions, Mr. Chairman.

8 THE CHAIRMAN: Thank you, Mr. Edwards.
9 We are going to take a short lunch and I think we will
10 return at 1:15 and be prepared to commence with OFAH.

11 MR. EDWARDS: Mr. Chairman, before we
12 break, could you give some direction as to when Mr.
13 Cassidy might be expected -- be allowed to reply to the
14 arguments of the other day?

15 THE CHAIRMAN: Well, I think --

16 MR. EDWARDS: I just didn't want to miss
17 it.

18 THE CHAIRMAN: I think we will do that
19 Tuesday night along with the scoping of Panel 17 which
20 shouldn't take very long.

21 MR. CASSIDY: Personally I am flattered
22 here.

23 THE CHAIRMAN: Just before we rise, we
24 intend to finish this panel next week and we are going
25 to commence at 8:30 on Tuesday, and as we have worked

1 out the time based on the estimates given to us by
2 various counsel and representatives, we should be able
3 to do. It may take a late session Wednesday, but we
4 will do it. That's our intention.

5 And I take it, Dr. Quinney, that you are
6 still within your day of cross on this panel?

7 DR. QUINNEY: (nodding affirmatively)

8 THE CHAIRMAN: Thank you. We will return
9 at 1:15.

10 ---Luncheon recess taken at 12:35 p.m.

11 ---On resuming at 1:25 p.m.

12 THE CHAIRMAN: Thank you. Be seated,
13 please.

14 Mr. Hanna?

15 MR. HANNA: Mr. Chairman, I would like to
16 indicate just where I'm planning on going at least for
17 the first part of this afternoon.

18 I would like to first make sure that I
19 use the words in the same way that the panel does, so I
20 have got just a couple of definition questions just so
21 we don't get tied up in words.

22 And then I would like to briefly go
23 through the matter of compliance monitoring and then
24 move on to what - I'm not sure of the right term - I
25 have used impacts monitoring here, and there has been

1 effects monitoring and effectiveness monitoring
2 programs, perhaps I will get that sorted out, the right
3 term I should use.

4 And I hope by the end of the day to have
5 also dealt with the effectiveness monitoring part of
6 this panel's evidence.

7 THE CHAIRMAN: Very well.

8 CROSS-EXAMINATION BY MR. HANNA:

9 Q. Good afternoon, panel. These are one
10 of the ones where you have to memorize all the names.

11 I would like to start with Mr. Straight.
12 Mr. Straight, I saw you were the author of the witness
13 statement unlike some of the other people on the panel
14 and I, therefore, directed my questions to you, but I'm
15 sure there are other members of the panel that may jump
16 in, so I invite them to do that, as and when
17 appropriate.

18 Now, as I mentioned, I would like to get
19 some words straight so I use them properly. Compliance
20 monitoring seems quite straightforward, it's basically
21 ensuring what has been planned to be done actually
22 occurs on the ground. Is that a fair assessment of
23 compliance monitoring?

24 MR. STRAIGHT: A. Did we achieve what we
25 wanted to do, that's correct.

1 Q. And what you want to achieve is set
2 out in the timber management plan?

3 A. That's correct.

4 Q. That one is an easy one. The next
5 one is a little bit more difficult for me, and that is
6 what I call impact monitoring. I hate to introduce a
7 new term and you may tell me that's the wrong -- you've
8 got a term that already covers this and, therefore, I
9 will retract it.

10 But what I'm talking about with respect
11 to impact monitoring is monitoring on an individual
12 timber management basis to see that the impacts that
13 you are predicting actually occur in the way that you
14 are expecting them to.

15 Now, you may have a term that already
16 covers that and, if you do, I'm happy to use it.

17 A. Perhaps referring to the Class
18 Environmental Assessment which we referred to earlier
19 might. There is a definition of effects and
20 effectiveness monitoring there that has directed our
21 approach, and that is on page 196 of the Class EA.

22 Q. I'm familiar with that.

23 A. With that definition?

24 Q. Effects monitoring in my -- or
25 perhaps in your terms, does that imply that that would

1 be done on a plan by plan basis?

2 A. I think -- the way in which we have
3 conducted it, we conduct effects and effectiveness
4 monitoring, was the evidence of this panel in total and
5 we also visited that in lead in a very specific way.
6 I'm just wondering if it would help if Dr. MacLean went
7 through his effects and effectiveness diagram.

8 THE CHAIRMAN: Mr. Hanna, the Board's
9 reluctant to enter into bringing into the hearing new
10 definitions. I think this panel has decided that they
11 are going to deal with this whole monitoring aspect
12 using certain definitions to which they have applied
13 precise words and precise meanings, and I think it
14 would be helpful if we stuck to what they mean by it.

15 If you have some issue or if you want to
16 take issue with the fact that what they consider to be
17 effects monitoring doesn't cover something that you
18 want it to cover, so be it; but impact monitoring is
19 not going to help us much because our notes up to this
20 point - and believe me they are voluminous - have dealt
21 with the other terms.

22 MR. HANNA: I appreciate that, Mr.
23 Chairman. That is why I mentioned I had some
24 reluctance to introduce a new term. I just want to
25 make sure that when we talk about effects monitoring, I

1 want to separate out effects and effectiveness
2 monitoring and that was the reason I introduced that
3 term because, in reading the witness statement, I felt
4 that they perhaps weren't as clear as I might have
5 wanted them to be.

6 But if we can make them clear, that's
7 fine, I'm happy to use those terms.

8 Q. Effects monitoring, I would like to
9 deal with specifically - and I will use that term, Mr.
10 Straight - is looking at the effects on the environment
11 after an activity proposed, a planned activity has
12 taken place in determining whether the effect is what
13 was anticipated?

14 A. Effects monitoring is assessing
15 whether or not there is a change in the environment,
16 there is an effect that is created as a result of doing
17 timber management.

18 Effectiveness essentially is an attempt
19 to answer the question: Did we adequately prevent the
20 effect, a potential effect from occurring.

21 Q. Well, perhaps it will come out
22 clearer in my later questions. We will leave the
23 definitions for the time being. I would like to move
24 to compliance monitoring, if we might.

25 MR. HANNA: And perhaps for the benefit

1 of the Board, just so they understand where I'm going,
2 it's my view that compliance monitoring is a relatively
3 straightforward task and I'm simply going to ask
4 several fairly simple questions on that to confirm that
5 and basically put that issue to bed, if you like, a
6 fairly straightforward thing and I just want to make
7 sure that we are all on same lines as far as what
8 comprises compliance monitoring.

9 Q. Now, compliance monitoring as we have
10 said is designed to ensure what happens on the ground
11 is what was designed in the plan?

12 MR. STRAIGHT: A. Basically correct.

13 Q. And, therefore, to make sure that it
14 happens you have to have a clear specification in the
15 plan of what you expect to happen on the ground?

16 A. Certainly you are going to check what
17 it is that you have stated in the plan.

18 Q. And if it isn't stated clearly in the
19 plan then you can't be clear that it's happened on the
20 ground?

21 A. Well, I think if you have stated it
22 clearer, then certainly you are going to have more that
23 you are going to have to check for, that's correct.

24 Q. Okay. Given that what we are
25 basically doing is taking a plan and making sure it

1 happens on the ground, the level of qualification and
2 experience to undertake compliance monitoring is not
3 overly onerous.

4 A. Is that a question or an observation?

5 Q. I'm asking, would you agree with
6 that?

7 A. Okay. Would you repeat it in the
8 form of a question then.

9 Q. Well, given that what we are
10 basically doing in compliance monitoring is taking a
11 plan--

12 A. Right.

13 Q. --and asking someone to go out on the
14 ground and say did what was proposed in the plan happen
15 on the ground.

16 A. That's correct.

17 Q. It's a relatively real technical
18 task: Did (a) occur on (a) on the ground as we
19 proposed?

20 A. I would say it can be done as in a
21 technical basis, yes.

22 Q. It basically requires someone who can
23 read a map, figure out where on the ground and follow
24 through in that sort of way in terms of being able to
25 make those sort of observations?

1 A. That would be one situation.

2 Q. Would you feel confident giving such
3 a responsibility to a forest technician level staff?

4 A. To check. Yes, I would, generally.

5 Q. Now, in terms of non-timber values,
6 they are reflected in the timber management plan in
7 terms of specific actions, for example with moose
8 habitat, you say we are going to leave the shelter
9 patch for moose habitat and, therefore, in terms of
10 protection of non-timber values, at least as far as
11 compliance monitoring goes, it's relatively
12 straightforward also, inasmuch as they are dealt with
13 in the plan?

14 A. In that particular instance you
15 raise, that's correct.

16 Q. Now, I would like to turn to effects
17 monitoring because that is where I think, from my
18 client's point of view, it's perhaps somewhat more
19 contentious.

20 Now, it's my understanding there is two
21 reasons that you undertake effects monitoring; the
22 first is the decision to approve an undertaking, a
23 timber management plan - an individual timber
24 management plan we are talking about now - is based
25 upon certain anticipated effects occurring and the

1 decision being that those effects are acceptable, that
2 the benefits that result from that activity will offset
3 any effects that occur and, therefore, approval is
4 given.

5 Would you agree with that?

6 A. That may be -- it's true in certain
7 cases but, generally, I would say that you undertake
8 effects monitoring to the degree that you can at that
9 level essentially to see if there is any evidence of
10 unanticipated problems or effects, okay.

11 In other words, you go through timber
12 management -- when you develop a prescription, you
13 develop a prescription to protect against a particular
14 effect from occurring. Compliance monitoring you check
15 to make sure that indeed that prescription was achieved
16 at the ground root level, and effects monitoring in a
17 general sense at the local level, as we presented in
18 lead, is somewhat constrained in terms of what types of
19 situations you can actually observe by that timber
20 technician that we were talking about.

21 Q. I'm well aware of that and that is
22 where I'm going to, ultimately. We will discuss that
23 matter.

24 A. Okay.

25 Q. But what I'm trying to deal with

1 first of all, is I'm looking at this after that hearing
2 is over, and we are now talking about an individual
3 timber management plan coming forward, going through
4 this planning process and it being given approval based
5 upon certain expectations, certain expectations in
6 terms of the environmental impacts.

7 A. That's right, okay.

8 Q. The question then arises: Are those
9 impacts upon which that we gave approval actually what
10 take place; are the impacts greater or less, or are we
11 reasonably accurate in what we expected?

12 A. Yes.

13 Q. That is one reason to undertake
14 effects monitoring?

15 A. Yes, that's correct.

16 Q. Particularly in timber management
17 where we have --

18 A. In MNR's -- sorry, Mr. Hanna. In
19 MNR's context, if we prevented those effects having put
20 practices into place to deal with or to prevent them,
21 we would consider ourselves effective. I'm just
22 wondering if we are going to start playing around with
23 effects and effectiveness.

24 Q. Okay, let's deal with that now.
25 There is the possibility that you can come up with a

1 timber management plan - and I say this very
2 hypothetically - but you could come up with a timber
3 management plan whereby there was no environmental
4 impacts whatsoever and, in that case, you would say:
5 We have done all our mitigation and whatever and we
6 have protected all the resource values and there is no
7 impact.

8 But even in that particular case, when
9 approval was given to that timber management plan, you
10 would still have to go out and check and make sure that
11 what you said was going to happen actually happened?

12 A. Compliance monitoring, correct.

13 Q. No, no, no, not compliance
14 monitoring.

15 A. Well, the way in which -- well, okay,
16 maybe I'm misunderstanding. Sorry, go ahead.

17 Q. Compliance monitoring makes sure that
18 what you planned to do on the ground actually happens?

19 A. Yes.

20 Q. Effects monitoring is saying: If we
21 do what we plan to do this is what we anticipate will
22 happen. Now we want to go out and check to make sure
23 what we anticipated will happen is no worse than what
24 we expected at least?

25 A. Okay. And that is the provincial

1 monitoring program essentially that we have defined,
2 would you agree with that, that we have presented in
3 lead and in evidence?

4 Q. I'm going to come to the provincial
5 monitoring program.

6 A. Okay.

7 Q. I see the provincial monitoring
8 program in a different light. I'm looking at - and
9 perhaps to give you an explanation of where I'm coming
10 from - I'm looking at a timber management plan for all
11 intents and purposes being -- each plan being for all
12 intents and purposes an environmental assessment in a
13 sense?

14 A. Well --

15 Q. And hopefully as a result of this we
16 won't have to go through hearings or whatever at least
17 not very often, but essentially that is the process we
18 are setting up?

19 A. Each timber management plan is what
20 you just said, it's a timber management plan and in
21 that timber management plan we have a process for
22 dealing with preventing environmental effects, okay.

23 And in lead evidence we suggested that
24 why we can't put an effects and effectiveness
25 monitoring plan, if you will, into that timber

1 management plan because of all of the problems in
2 conducting the kind of studies or assessments that
3 would be required at that level.

4 Q. Right. And the table which you
5 prepared in your witness statement which itemizes
6 that--

7 A. Suggests the limitations to what we
8 can do at the local level, yes.

9 Q. But this comes back to the point that
10 I'm trying to make in terms of when approval is given
11 on an individual usual timber management plan.

12 A. Okay.

13 Q. That approval is given conditional
14 upon certain events happening or expected to happen.

15 A. Yes.

16 Q. Now, throughout the evidence the
17 proponent has brought forward in this case we have
18 heard repeatedly the site-specific nature of the forest
19 estate and the fact that you can't deal with these
20 things at a generic level, et cetera, et cetera. I'm
21 sure you are familiar with that general line of
22 evidence.

23 What I'm concerned about is, we have a
24 provincial level effectiveness program, which we will
25 get to in due course, that is dealing with a number of

1 sites but hardly is going to be able to deal with all
2 the site-specific examples that we are going to deal
3 with in timber management plans in this province.

4 A. And that is why we have taken a fair
5 amount of time and effort to try and carefully select
6 the situations that we should look at, that is true.

7 Q. Well, maybe I will turn it around the
8 other way then.

9 THE CHAIRMAN: Just let me try to assist
10 for a moment, Mr. Hanna. I think where Mr. Hanna is
11 going, Mr. Straight, is that you have not put forward
12 an effects monitoring program on a plan by plan
13 specific basis.

14 MR. STRAIGHT: That's correct.

15 THE CHAIRMAN: And Mr. Hanna is leading
16 us down the path to say that in an individual timber
17 management plan you don't go about -- after the
18 activity has taken place, you may go through compliance
19 monitoring, but you don't go through on a plan by plan
20 basis effects monitoring per se, you cover off that by
21 implementing the provincial effects monitoring program
22 which has enough variety in it in terms of specific
23 situations to supposedly cover most situations that you
24 encounter at a local level.

25 MR. STRAIGHT: Fundamentally that is

1 correct, Mr. Chairman.

2 THE CHAIRMAN: Is that a fair phrase of
3 what is happening?

4 MR. HANNA: Thank you, Mr. Chairman.

5 THE CHAIRMAN: And I think you are trying
6 to point out that there may be a deficiency in the
7 monitoring program in that it doesn't deal specifically
8 on a plan by plan basis with respect to monitoring.

9 MR. HANNA: That being a component that
10 deals with that, yes.

11 THE CHAIRMAN: That's right.

12 MR. STRAIGHT: That's right.

13 MR. HANNA: That is one of my concerns,
14 yes.

15 MR. GORDON: Mr. Chairman, if I could be
16 helpful, and I know it's not contained directly in the
17 plan, but from a timber estate point of view, a wood
18 supply point of view, I would suggest that the
19 discussion that I carried on in lead, what I was
20 talking about there was the results of
21 effects/effectiveness monitoring relative to the timber
22 resource and that is done on a plan by plan -- a
23 management unit by management unit basis.

24 THE CHAIRMAN: But I think he's talking
25 about some of the other non-timber values.

1 MR. GORDON: Okay.

2 THE CHAIRMAN: And that of course is
3 dealt with in terms of other resource programs which
4 may be separate from the timber management planning
5 program.

6 MR. GORDON: Okay, thank you.

7 THE CHAIRMAN: And, again, Mr. Hanna, we
8 just don't have a situation in Ontario where it's all
9 done in one shot al a Baskerville.

10 MR. HANNA: I thought that was somewhere
11 in North Carolina. Okay, yeah.

12 THE CHAIRMAN: In other words, all of the
13 resource management programs aren't integrated into
14 one, as we understand it, that is not the way Ontario
15 has chosen to conduct their plan.

16 MR. HANNA: Yeah. I'm not sure that that
17 has to fall out of that, but I appreciate your
18 assistance in clarifying that matter, Mr. Chairman.

19 Q. Mr. Straight, then given what you
20 have indicated to the Chairman, can I conclude then
21 that when an individual timber management plan is
22 brought forward and approval is given based upon a
23 projection of effects, that there will be no way that
24 any member of the public will know in fact whether or
25 not those effects did or did not occur on an individual

1 plan basis?

2 MR. STRAIGHT: A. I suppose technically
3 at an individual plan basis you are right, there is no
4 way of being able to totally predict whether -- at that
5 level whether all of those actual effects occurred or
6 didn't occur, and I'm thinking of the whole range of
7 effects when I'm saying here.

8 What that individual member of the public
9 don't have is an indication that within the bounds of
10 current science in our knowledge and through the
11 application of the process as we have defined it, that
12 we expect a very -- we expect a reasonable level of
13 environmental protection.

14 Q. I think what you are saying is: Rely
15 on the predictions that will come out of the
16 effectiveness monitoring program as representing what
17 will happen in that particular example?

18 A. We are basically saying that we will
19 rely on the provincial monitoring program to
20 corroborate the degree to which we have prevented a
21 potential effect, that's correct.

22 Q. Let's just for a moment take the
23 situation that in fact it was proposed to undertake
24 effects -- some type of effects assessment on a plan by
25 plan basis, okay.

1 A. Okay.

2 Q. Now, presuming that you carefully
3 select those indicators, those environmental indicators
4 that you are going to use to monitor the effects, and
5 by that I mean not necessarily watching, grading,
6 whatever you call it, of every moose in every harvest
7 area, but perhaps using the standard type of
8 information that the Ministry collects in terms of,
9 let's use moose population numbers, by systematically
10 doing that across the area of the undertaking, would
11 you not agree that you could amass a great deal of
12 information covering a wide variety of sites in a
13 relatively short period of time?

14 THE CHAIRMAN: But, Mr. Hanna, what good
15 does that do in this situation if the Ministry is
16 relying on managing moose province-wide instead of
17 managing moose on a unit by unit basis, in your
18 example?

19 MR. HANNA: Mr. Chairman, I expect that
20 these decisions that will be made on a case-by-case
21 basis on a timber management by timber management plan
22 basis will be based upon the impacts that are expected
23 on that local moose herd. In fact, I can't envision
24 any other way that those decisions could be made.

25 And it is in that way that when you come

1 forward and you say: Here's my timber management plan,
2 here's my expectation in terms of how the moose herd
3 will respond, that the decision will be made whether or
4 not to accept or reject that proposal.

5 THE CHAIRMAN: Yes, but how does that fit
6 in necessarily with the boundaries of wildlife units
7 versus timber management units and all of that evidence
8 that we have heard - I don't know - I'm putting it to
9 the panel.

10 MR. STRAIGHT: I am sorry, Mr. Chairman,
11 what is it that you would like to put to the panel?

12 THE CHAIRMAN: Well, if you are going to
13 examine the impacts on moose within an individual
14 timber management plan, as I understood it, the
15 wildlife unit boundaries may differ from the boundaries
16 even encompassed by the plan, No. 1, and you may have
17 an impact within a timber management unit from a
18 certain activity that will not necessarily affect your
19 management plan for moose because you are doing that on
20 a provincial basis, and it may be that a problem in a
21 particular confined area which may be covered by a
22 timber management plan or part thereof will not affect
23 your overall management of moose in a deleterious way.

24 Perhaps Dr. Euler can corroborate that is
25 the way you are doing it.

1 DR. EULER: Yes, Mr. Chairman, I'm
2 nodding my head because that is indeed the way we do it
3 and that indeed is the philosophy.

4 THE CHAIRMAN: And, therefore, it would
5 be difficult to necessarily have effects monitoring
6 just with respect to a timber management plan because
7 of the area which is covered by that plan; is that
8 right?

9 DR. EULER: Yes, yes, that is exactly
10 correct.

11 THE CHAIRMAN: So that is why I'm
12 questioning, Mr. Hanna, when you are using the example
13 of moose and because that is managed under the wildlife
14 management program in a different fashion than the
15 timber management planning process, it just may not
16 jive.

17 MR. HANNA: Well, Mr. Chairman, I'm
18 afraid things don't jive with me either then because
19 what I am faced with is I'm seeing timber management
20 guidelines particularly for moose habitat being applied
21 on a timber management planning basis, decisions being
22 made in terms of timber management plans and timber
23 management plan impacts on moose herds and I'm hearing
24 Ministry biologists say we can't do it that way. And
25 I'm at a total loss then as to how these decisions are

1 going to be reached.

2 DR. EULER: We didn't say we can't do it
3 that way, we said we don't do it that way.

4 MR. HANNA: Q. Well, how is a decision
5 going to be made, Dr. Euler, in terms of the
6 application of the moose habitat guidelines on a timber
7 management plan basis, not a wildlife management unit
8 basis?

9 How are you going to make those
10 determinations and their associated ramifications on
11 the moose herd without dealing with the timber
12 management plan unit as a unit in itself?

13 DR. EULER: A. Well, this is so
14 confusing it's very difficult to answer but, you see,
15 we make decisions on a timber management plan but that
16 plan is part of a bigger unit, and so all of those
17 decisions on all of those timber management plans have
18 to fit together into some coherence on the wildlife
19 management unit.

20 And so that is the job of the district
21 biologist, is to bring coherence to that process
22 because the district biologist has responsibility for
23 the wildlife management unit and he may be working with
24 two, three, four, five several timber management plans.
25 And so for him the most meaningful way to collect

1 statistics would be on the wildlife management unit as
2 opposed to the timber management plan.

3 Q. Right. But you did say that in order
4 for him to come to those sort of conclusions he has to,
5 I think your word was corroborate, synthesize,
6 integrate, whatever the impacts or the effects of the
7 activities that are taking place on each one of those
8 timber management planning areas?

9 A. Yes.

10 Q. And so all I'm saying is: Fine, I
11 will accept that. And now I'm saying: Let's talk
12 about a timber management plan, accepting that you are
13 going to look outside of that unit also and look at all
14 the other interactions that the biologist has to look
15 at, but you have to make decision in terms of
16 acceptability on a timber management plan basis, you
17 can't make a decision in terms of timber management
18 activities, you aren't approving timber management on
19 the basis of a wildlife management unit?

20 A. Yes, that is true.

21 Q. Fine. And then what follows out of
22 that, you are anticipating a certain influence on the
23 moose herd from that activity taking place in that
24 particular timber management unit?

25 A. Yes.

1 Q. End of my -- that is the simple and
2 short and sweet of it.

3 A. Good.

4 Q. So you could do effects monitoring on
5 a timber management plan by timber management plan
6 basis?

7 A. We could, we just don't think that's
8 the most effective or efficient way to do it.

9 MR. STRAIGHT: A. Mr. Hanna, just -- I
10 guess what we have tried to come to grips with or
11 grapple with when we developed the process that we
12 developed was a recognition of the broad range of
13 effects. We are not just talking about moose here, we
14 are talking about phosphorus levels, we are talking
15 about socio-economic concerns, we are talking about a
16 whole host of effects.

17 And Dr. MacLean in lead evidence tried to
18 go into some detail about essentially how difficult it
19 can be to detect some of these effects, the complexity
20 of it, the variability of the natural systems, and the
21 need for basically a high standard of scientific study
22 to really be able to address the issue of finding out
23 or being able to assess whether or not we are being
24 effective and also the costs and practicality of being
25 able to do those on a large basis.

1 So when we really -- when you pull out
2 one particular effect or one particular resource value
3 like moose it tends to -- it tends to give you an
4 incorrect focus on what the complexity of the large
5 situation is. And so it's with that understanding --
6 with that current understanding we have of that
7 basically fairly complex environment out there that we
8 have designed the overall process that we have
9 designed.

10 Q. Well, just --

11 MS. MURPHY: Mr. Chairman, I don't want
12 to interfere with my friend, but just listening to
13 where we are now, I would suggest that this very issue
14 has been canvassed by Mr. Hanna and his predecessors at
15 least in Panels 1, 7, 8, 10, 14 and 15.

16 MR. HANNA: Could I have those numbers
17 again, please?

18 MS. MURPHY: 1, 7, 8, 10, 14 and 15 by my
19 recollection --

20 MR. HANNA: I'm afraid I don't know what
21 my friend is referring to, Mr. Chairman.

22 THE CHAIRMAN: Well, let's not waste too
23 much time arguing about whether you have done it or
24 not. Let's go on with your questioning and we will
25 see. If we think they are too repetitious of previous

1 evidence, we will tell you.

2 MR. HANNA: Q. Mr. Straight, just so you
3 understand where I'm coming from, I don't disagree at
4 all with the evidence that Dr. MacLean has given in
5 terms of variability and whatever, I think the question
6 becomes one: Different environmental effects require
7 different types of measures, what might be suitable for
8 moose may not be suitable for phosphorus levels in
9 lakes and I will accept that, I think that's
10 self-evident. The subject of cost and practicality I
11 think is really where the rubber hits the road and
12 that's where ultimately I'm heading for.

13 I'm trying to see if there is a way to
14 effectively carry out effects monitoring in at least a
15 financially feasible way as possible.

16 And I what I have heard you say is, you
17 say: The environment is very complicated, we have got
18 all these problems and difficulties and uncertainty in
19 the natural environment, which I think the Board is
20 well aware of, but yet we have the circumstance where
21 it's an individual timber management plan and we really
22 don't know what is going to happen there because of all
23 the uncertainty and complexity and all those other
24 weird wonderful things that we have to say about the
25 natural environment.

1 MR. CASSIDY: Is there a question?

2 MR. HANNA: It will eventually be.

3 THE CHAIRMAN: Well, let's try -- I mean,
4 you are going to have a chance, Mr. Hanna, as you are
5 aware, to give your side of the case. You can put
6 forward whatever effects monitoring program your side
7 feels is appropriate. Let's question these witnesses
8 on their program which is their evidence.

9 MR. HANNA: Q. Can we talk then about
10 how adaptive management might be applied in terms of
11 effects monitoring. Adaptive management is in a way a
12 whole system experiment; would you agree with that, Mr.
13 Straight?

14 MR. STRAIGHT: A. Now, when you say
15 adaptive management, you are talking about
16 Baskerville's adaptive management?

17 Q. Baskervillian adaptive management.

18 A. His nine steps or whatever of
19 adaptive management?

20 Q. Yes.

21 A. Okay. And I'm going to ask Dr. Euler
22 if he will deal with that particular subject matter for
23 you.

24 THE CHAIRMAN: I think you will have to
25 repeat the question for Dr. Euler.

1 MR. HANNA: I'm sorry.

2 Q. Is adaptive management a form of
3 whole system experiment?

4 DR. EULER: A. Yes, I think that's fair.

5 Q. Back to my hypothetical. If the
6 effects monitoring were to be undertaken on a
7 plan-by-plan basis, would that be a way to implement
8 whole system experiment and, in essence, adaptive
9 management?

10 A. Yes, I think that's true.

11 Q. And is one of the advantages of that
12 particular approach that by having such a large number
13 of observations that much of the complexity that you
14 are faced with in the natural environment system can be
15 effectively handled?

16 A. Yes, I think that is true.

17 Q. And then would you say that the
18 reason that -- or the major barrier then to that
19 approach is one of financial feasibility?

20 A. I think that's the major barrier,
21 yes. There might be some other statistical design
22 problems, but the major barrier would be financial and
23 practicality, the whole business of: Can you actually
24 do it with the time and money that you have.

25 Q. Has there been any analysis of that

1 option?

2 A. Well, there has been analysis in the
3 sense that it has been considered and, in that sense,
4 yes, and the decision has been not to do it. Now, I
5 can't point to a mathematical analysis or a statistical
6 analysis.

7 Q. Financial analysis.

8 A. I can't point to that, no. I can't
9 point you to a written analysis that contains numbers
10 and figures and that sort of thing. It's been analysed
11 at a very broad general level.

12 Q. Is it possible, Dr. Euler, that if
13 you used fairly high level indicators of environmental
14 impact, and what I mean by that is moose population
15 trends, fish population trends, without going through
16 all the intricate, if you will, environmental dynamics
17 of the system, that that approach might be more
18 financially feasible?

19 A. Than what?

20 Q. Than doing your effectiveness
21 monitoring program that you are currently proposing
22 which involves describing, in what people might call a
23 great deal of detail, various environmental components?

24 A. Well, no, I don't think so. I think
25 the indicator species approach would be --

1 Q. Excuse me, I didn't use indicator
2 species approach.

3 A. All right.

4 Q. I'm not entering into that field at
5 all. We will save that for later.

6 A. All right. So can we call it the
7 indicator approach?

8 Q. Fine.

9 A. Okay. Well, I think based on my
10 understanding is that that would be considerably more
11 expensive, but I want to qualify that by saying it's
12 very difficult to analyse that in this -- very quickly
13 like this in this sort of forum, but my best judgment
14 would be that would be considerably more expensive.

15 Q. Can you just quickly just explain why
16 you feel it's more expensive, because I have a problem
17 with logic there?

18 A. You see, if you are collecting data
19 at the timber management plan level on moose, say, or
20 any of the other indicators whatever these higher level
21 indicators are - see, we don't know exactly what they
22 are, so that's hard - I just can't -- it's quite a job,
23 it's a big job because you are sampling problem is
24 going to be difficult and you are going to have to
25 spend a fair bit of money getting appropriate sample

1 sizes and doing the appropriate analysis.

2 Q. But doesn't the Ministry regularly
3 collect at the present time that sort of information
4 with respect to moose?

5 A. No, not on the timber management unit
6 level, no, we collect it at quite a higher level than
7 that.

8 Q. The wildlife management unit level?

9 A. Yeah, yeah. See, like an area survey
10 for moose is done at a wildlife management unit level
11 which is a more efficient way of doing it than at a
12 timber management planning level, I think, to the best
13 of my knowledge it would be.

14 Q. But given the way that those surveys
15 are undertaken, there is nothing to prevent you from
16 applying those at a timber management unit level?

17 A. Well, it's just that if you don't
18 have any plots, it happened to fall in a timber
19 management planning area then, of course, you can't and
20 to get your plots in the timber management planning
21 areas is a more sophisticated and complicated technique
22 than the way we do it now.

23 Q. Okay. In aid of a response, let's
24 just limit it to moose, would you say that when you
25 said it will be certainly more expensive, you are

1 referring then to on top of the current expenditures
2 that the Ministry has for moose surveys?

3 A. Yes.

4 Q. And how much more would you expect it
5 would be; twice, three times, ten times. I'm just --
6 you must have some idea.

7 A. Well, I would -- the best that I can
8 say is on the order of magnitude to four to five times.

9 DR. MacLEAN: A. Perhaps I can
10 interject, Mr. Hanna, too. I mean, the reason why we
11 have chosen in the provincial program to measure things
12 other than general level indicators is that we do have
13 the two objectives in mind, both in being able to
14 detect resource effects if those occur under the
15 guidelines, but also to be able to modify those
16 guidelines we have to know why those effects occur.

17 And so we are measuring a number of
18 interim steps in order to be able to pinpoint exactly
19 how the guidelines have to be modified.

20 Q. Well, Dr. MacLean, that is the reason
21 why I wanted to break out effects and effects and
22 effectiveness, and I will deal with effectiveness, and
23 I appreciate fully where you are coming from, but I'm
24 trying to limit myself now to the operational side of
25 it in terms of where I'm coming from in terms of

1 effects monitoring. We will deal with effectiveness
2 monitoring in due course.

3 MR. HANNA: I'm trying to truncate this
4 as much as I can, Mr. Chairman. Just give me a moment.

5 THE CHAIRMAN: We shall assist you in
6 every way possible.

7 MR. HANNA: Well, I think I will leave
8 that issue for now and, as I say, I think it may be
9 something that's been dealt with in evidence-in-chief.

10 THE CHAIRMAN: Thank you.

11 MR. HANNA: I would like to move on to
12 the matter of effectiveness monitoring at this point if
13 I could. And perhaps just to tell the panel and the
14 Board where I'm coming from, the line of questioning I
15 wish to follow here deals with the following: First of
16 all, I think all members of the panel probably agree
17 that we are talking about major of investment of public
18 money, we are talking 40 or 60 or the \$50-million we
19 were talking about.

20 And my client is quite conscious and
21 quite concerned that the public gets the best value for
22 that money, if in fact the Board decides that that's
23 the appropriate expenditure. And so I want to make
24 sure that -- and I want to pursue with my line of
25 questioning that this is in fact is going to be a

1 worthwhile investment.

2 Another line of questioning I'm concerned
3 about with the effectiveness monitoring program is the
4 fact that it may lead to entrenchment of the guideline
5 approach and how that could possibly be avoided and I
6 would like to discuss that with the panel.

7 And I guess the last matter that I will
8 deal with in terms of effectiveness monitoring is the
9 closely interconnectness between the scientific basis
10 of the effectiveness monitoring program and the need
11 for quantitative predictions.

12 So those are the three areas that I will
13 be addressing.

14 Q. Now, I indicated, Panel, that I
15 expected you would agree with me. I presume that you
16 do or you would have interjected, but \$50-million is a
17 major --

18 THE CHAIRMAN: Well, I don't think you
19 can necessarily assume that because they didn't
20 interject they are agreeing with everything you're
21 saying.

22 MR. HANNA: I better put the question to
23 them to make sure that is the case, Mr. Chairman.

24 THE CHAIRMAN: They might just be polite.

25 MR. HANNA: Q. Would you agree with me

1 that the proposed investment in the effectiveness
2 monitoring program is a major long-term commitment.
3 Perhaps Dr. MacLean would be the best to answer.

4 DR. MacLEAN: A. I would think it is a
5 fairly substantial commitment, yes.

6 Q. And I expect you would also agree
7 that given the scope of this commitment one must be
8 particularly confident that one is setting out on a
9 sound course?

10 A. Yes, we would want to be assured of
11 that.

12 Q. Now, it's probably fairer to put this
13 question to Mr. Straight given his involvement with the
14 effectiveness monitoring program; and, that is, what
15 consideration has been given to alternate ways to
16 invest this money to deal with managing the effects of
17 timber impacts?

18 MR. STRAIGHT: A. Alternate ways in what
19 sense? If you look at the results of the follow up of
20 the recommendations of that March 8 ESSA Report you
21 will see that there were, in the technical studies that
22 followed, a number of different approaches that were
23 explored.

24 Q. Yes, I appreciate that. I didn't see
25 however exploration of, for example, using the habitat

1 supply analysis approach as opposed to a guidelines
2 approach in terms of that investment.

3 A. I guess the best way to approach this
4 is to provide you with a little bit of history anyway
5 on the subject. We were looking at a class
6 environmental assessment which had been submitted some
7 time ago, we were looking at dealing with a timber
8 management planning process that we were essentially
9 going to be asking the Board for approval to implement.

10 Part of that process dealt with the
11 definition of how we intended to protect the
12 environment. So, in a sense, this is part of a growing
13 or an evolutionary concept and process in the Ministry
14 that has its roots going back a significant number of
15 years. And so to some degree that focused the kind of
16 options that we tended to look at. That was one major
17 consideration in designing an effects and effectiveness
18 monitoring program.

19 The other thing that was a major
20 consideration in designing the program was basically a
21 knowledge of how the Ministry currently works, how we
22 conduct our planning, how we are organized, how we go
23 about doing business, how our capabilities were. And
24 while we considered, in general terms as Dr. Euler
25 referred to, of the use of things like habitat supply

1 analysis in general, we were basically to some degree
2 bounded by consideration of where we had been and where
3 we are going.

4 And that in many ways led to us taking
5 the approach that we did. We were very concerned about
6 being adaptive. We recognized a lot of the current
7 technology that is being developed, adaptive in a sense
8 that there is a constant feedback mechanism between
9 scientific studies and results and improving one's
10 ability to manage in an environmentally conscious
11 manner. And so we selected -- we had opted to go with
12 that kind of approach in our thinking.

13 I hope that gives you some understanding
14 of where we have been and where we're going. I also
15 should suggest I think as we have put in evidence in
16 lead; I mean, the world isn't going to end and stop
17 with that either, I mean, that whole field out there is
18 going to constantly change and, as a Ministry, we want
19 to be in a position to be able to be adaptive both to
20 results of studies that we do, adaptive to new
21 technology as it's reflected in our term and condition,
22 and even adaptive to new processes that may come down
23 in the future.

24 THE CHAIRMAN: Mr. Straight, would it
25 result, if the Ministry for instance was to take a

1 radical departure from the way it now carries on
2 business, for instance going to a habitat supply
3 analysis basis as an example, would that involve
4 dismantling a lot of the administrative structure that
5 the Ministry is now involved with?

6 MR. STRAIGHT: It may or may not, Mr.
7 Chairman, depending on how you -- what specific
8 definition or specific technique it is you want to
9 approach. m.

10 But clearly there are administrative and
11 organizational ramifications to most of these things
12 and Dr. Euler or Dr. MacLean might want to comment
13 further on it.

14 DR. EULER: Well, I guess my feeling
15 would be that that administratively it wouldn't cause
16 any major disruption to the Ministry in terms of our
17 structure. It's going to cost more, that is the big
18 problem, because you have got to have -- you know, you
19 have to have more equipment, more training, more
20 people. That is the big problem.

21 THE CHAIRMAN: So when you are analysing
22 these various options open to you, is what you are
23 saying that you have to do it within the confines or
24 restraints of realizing that if you go in a totally
25 different direction than you are now going, it will

1 have a very major fiscal implication?

2 DR. EULER: Yes, yes, that is the
3 problem, Mr. Chairman: What is the best technique in
4 terms of getting the job done at a reasonable cost,
5 what is the best -- it's just like a family budget,
6 buying a car or something, you weigh things in a
7 similar way.

8 MR. HANNA: Q. Dr. MacLean, did you have
9 anything to add?

10 MS. MURPHY: Sorry, I didn't hear.

11 MR. HANNA: Q. Dr. MacLean, did you have
12 anything to add?

13 DR. MacLEAN: (no response)

14 MR. CARY: Say no.

15 DR. MacLEAN: No.

16 THE CHAIRMAN: It's called leading the
17 witness, Mr. Cary.

18 MS. BLASTORAH: He's been trying to get
19 good counsel for a long time.

20 MR. HANNA: Q. Now, Dr. Euler, you
21 indicate that in your view HSA will cost more. When we
22 spoke last we had talked about this issue and you had
23 indicated at that time you hadn't done any analysis of
24 that sort. Has that been done now?

25 DR. EULER: A. The analysis?

1 Q. That you have now come to this
2 conclusion that it will cost more?

3 A. No. We are going to do a careful
4 analysis of exactly that. I may be wrong, that is just
5 simply my opinion, and we are setting out to do a
6 thorough analysis of that very question as carefully as
7 we can.

8 MR. HANNA: Mr. Chairman, perhaps I can
9 ask your direction on this. I'm aware that this study
10 is ongoing and it's just a matter of how we are going
11 to deal with this in the hearing in the event that it
12 comes forward.

13 Like, I'm quite prepared to leave this
14 for now because obviously the Ministry is going to
15 undertake that analysis and I just look to your
16 guidance as to how I might -- how is the best way to
17 proceed on that.

18 THE CHAIRMAN: Well, I think it's hard to
19 proceed with it, if the study hasn't been done at this
20 point there's no results to really comment on.

21 I suppose that if the study is completed
22 within the confines of this hearing and I assume - and
23 this is a general direction to the Ministry - that
24 whenever any study is ongoing that is relevant to the
25 matters the Board's considering, we expect the study to

1 be brought to the attention of the Board and the other
2 parties at the earliest possible moment; then, if
3 necessary, if it's relevant to be discussed at that
4 time, we will have to probably make arrangements to do
5 so. It's as simple as that.

6 MR. HANNA: Okay, Mr. Chairman.

7 THE CHAIRMAN: We realize that there is
8 many studies going on and this hearing is lasting
9 several months, if not years, and events tend to catch
10 up, or maybe we'll catch up with events, one or the
11 other.

12 MR. HANNA: Q. Dr. Euler, with respect
13 to the application of the guidelines and ability to do
14 predictive quantitative predictions, it's my
15 understanding that the conclusion was that there is too
16 much uncertainty to undertake those sort of predictions
17 at this time; is that correct?

18 MS. MURPHY: Is there some specific set
19 of guidelines that he's being asked about.

20 MR. HANNA: I am sorry.

21 Q. I'm referring specifically to the
22 fish and moose guidelines, more particularly to the
23 moose guidelines. Most of my questioning to date has
24 been with terrestrial wildlife and not with aquatic
25 wildlife, and I will indicate when I move to the

1 aquatic.

2 DR. EULER: A. There is some ability to
3 predict, but when you predict something there is always
4 a certain error rate around your prediction. We can't
5 predict in the sense that we are going to guarantee
6 that a certain result will happen.

7 Q. And you never can?

8 A. Right, but we can predict sort of
9 within a broad arrangement. We know that in general
10 and most of the time this is the approximate result we
11 are going to get, knowing full well that it may not
12 happen in a certain place but we can look at broad
13 averages of prediction. We can do -- so we have some
14 ability to predict, not as much as we would like, but
15 we have some.

16 Q. And one of the reasons for the
17 effectiveness monitoring program is to increase or
18 decrease the level of uncertainty, increase the level
19 of knowledge?

20 A. Yes, increase the level of knowledge
21 and decrease the level of uncertainty, yes.

22 Q. And is it your expectation at the end
23 of the ten years or whatever that the program will take
24 place that you will then be in a position to make
25 quantitative predictions, reliable quantitative

1 predictions that can be used operationally?

2 A. Well, we will be able to make better
3 than we can make now. Certainly we are going to
4 advance. Just exactly how quantitative or, like, what
5 the confidence limit around the prediction is, is
6 pretty hard to predict. But I'm confident it will be
7 much better than it is now.

8 THE CHAIRMAN: I think it sounds like you
9 are after the illusive guarantee, Mr. Hanna.

10 MR. HANNA: No, no, not at all, Mr.
11 Chairman, no. What I'm after is this; and, that is,
12 when will we know enough?

13 THE CHAIRMAN: Well, we will suggest when
14 we know enough.

15 DR. EULER: Maybe never. Well, we'll
16 never know enough. It's just a constant process of
17 learning and learning and improving all the time, and I
18 hope that is what we are trying to do is learn and
19 improve all the time and get better all the time. That
20 is what we are trying to do.

21 MR. HANNA: Q. Well, it's my
22 understanding that one of the major reasons for this
23 effectiveness monitoring program is that we don't know
24 enough right now; that is the determination that has
25 been made?

1 DR. EULER: A. Well, you see, I wouldn't
2 put it in quite those terms. The major reason for the
3 effectiveness monitoring program, as I understand it,
4 is to check and see if what we are doing is having the
5 results that we intended to have. So if we implement
6 moose guidelines we have "predicted" what will happen.

7 Q. What do the quotes mean?

8 A. Well, the word 'predict' is so
9 difficult in this circumstance because in the minds of
10 many people predict means something like Jeannie Dixon
11 was doing to do, like predict the future, okay. So
12 there is a connotation of predict.

13 In science, predict has very specific
14 meaning. You would say 19 out of 20 times if you
15 repeat this experiment you will get the same result
16 within 10 per cent. Well, that's a form of prediction.
17 It's a very precise form of prediction. And so it's
18 very difficult word to use in this context.

19 What we have done is, for example, we
20 have set a target and we have said: Okay, if we take
21 the following actions we expect -- we have a reasonable
22 expectation of meeting that target, and that is -- so
23 that is our underlying thought: Take the actions, fire
24 the six guns, here's the result we expect.

25 Now, however, let's check that, let's see

1 if indeed we get what we wanted to get and what we
2 expected to get. That is our effectiveness monitoring
3 program, as I understand it.

4 Q. Okay. And what that is leading to me
5 is this question; and, that is, you suggested that
6 you're going to take activities and you expect that you
7 are going to hit the target. Where is it set out what
8 the actions are and how the cause/effect linkage is
9 going to lead to you hitting the target, if I can put
10 it that way?

11 A. Well, I would suggest that for moose
12 it's in moose policy where we have said: We have two
13 major tools, two six guns, the hunting management tool
14 and the habitat management tool and together, by using
15 them, we expect to reach a target level.

16 Now, our problem of course is there is a
17 lot of uncertainty in how those tools work, which is
18 more effective, exactly how they work, is it size of
19 clearcut, is it winter shelter, is it browse, just
20 exactly what is it in there that makes it work. And
21 that is -- we are trying to reduce that uncertainty
22 with our effectiveness monitoring program.

23 Q. The effectiveness monitoring program
24 is essentially a research endeavour; would you agree
25 with that?

1 A. Yes.

2 Q. A scientific research endeavor?

3 A. Yes, essentially.

4 Q. And it's based around, if you will,
5 the basic scientific method which is to establish
6 hypotheses regarding cause/effect linkage.

7 A. Yes.

8 Q. Make predictions to what you
9 anticipate will happen?

10 A. Yes.

11 Q. Which will serve to modify your
12 hypotheses to accept or reject it?

13 A. Yes.

14 Q. Pretty simple stuff?

15 A. Yes.

16 Q. Pretty simple concept?

17 A. Well, I wouldn't say it's simple.

18 Q. All I'm trying to get at is this: In
19 order to come to some conclusion in terms of, say, the
20 the observations in terms of physiology of moose, you
21 have to make some prediction as to the effects?

22 A. And that is usually in the form of a
23 hypothesis, yes.

24 Q. Hypothesis, correct, in terms of
25 cause/effect linkage?

1 A. Yes, that's right and then you test
2 the hypothesis.

3 Q. Where are those hypotheses, and I'm
4 well aware of the effects monitoring report done by
5 ESSA, but I see nothing in there in a quantitative way
6 and we have been around this ESSA report, if you will,
7 many times.

8 THE CHAIRMAN: Well, aren't you
9 developing, Dr. Euler, the hypotheses by bringing
10 together essentially experts in the field and trying to
11 reach a consensus as to what the hypothesis to be tested
12 should be? Is that not the essence of the ESSA
13 procedure?

14 DR. EULER: Well, that's right. You see,
15 the hypothesis, the development of hypothesis is really
16 kind of a nested process.

17 In the ESSA Report we had a number of
18 hypotheses of effect. Well, now the next phase in the
19 study is to bring those hypotheses down to the testable
20 level and make them quantitative: a moose will have
21 two babies every year is sort of a testable hypothesis
22 that's quantitative. And that is one of the first
23 steps in MGEM is to get those hypotheses worked into a
24 quantitative testable way.

25 THE CHAIRMAN: But there is no other way

1 to do that other than to consult the experts in the
2 area--

3 DR. EULER: Yes, that's correct.

4 THE CHAIRMAN: --as to what is reasonably
5 testable?

6 DR. EULER: Sure, and that's a reasonable
7 hypothesis and so on, and which hypothesis helps
8 contribute to your objective and so on, yes.

9 MR. HANNA: Q. All right. So what you
10 are saying is the first step - and I call it Mega-GEM
11 but MGEM is fine - when you expect that to take place,
12 you will then have developed that quantitative linkage
13 in a preliminary way?

14 DR. EULER: A. I would like to use the
15 word hypothesis here, if we could. Is linkage the same
16 as hypothesis?

17 Q. I will take quantitative hypothesis,
18 I don't mind.

19 A. Okay.

20 Q. So you're saying that is your first
21 step in approaching that?

22 A. Is to refine the hypothesis of effect
23 that were in the ESSA Document into quantitative
24 hypothesis that are testable in the field.

25 Q. That hasn't taken place yet?

1 A. No, it's in process.

2 Q. Now, when that's done we will have
3 available to us then a predictive tool, perhaps not one
4 that's been fully field tested, but you will have a
5 predictive tool based upon the best available
6 information at that time?

7 A. What do you mean, when the hypothesis
8 are refined and...

9 Q. Once you have that hypothesis set
10 out.

11 A. Yes, there will be a number of them.

12 Q. Well --

13 A. We will have a predictive tool, well,
14 yes, I suppose, yes. That's a little bit of an unusual
15 way of describing it, but it's probably okay.

16 Q. It would be the best predictive tool
17 you can construct with current information?

18 A. Well, I don't like to equate
19 predictive tool with hypotheses. I mean a hypothesis
20 is something you test.

21 MS. MURPHY: Can we just ask Dr. Euler to
22 speak into the microphone. I understand the reporter
23 is having difficulty hearing you.

24 DR. EULER: I'm sorry. I get so involved
25 in what we are talking about I forget myself.

1 See, I don't like to call it a predictive
2 tool because, again, that raises expectation in the
3 listener that are not really there I think. It's a
4 hypothesis you are testing. So the hypothesis, one of
5 them, could well be Moose Habitat Guidelines have no
6 value, they don't produce any more moose than
7 non-guideline areas. That's a hypothesis; it's
8 testable, it's quantitative, but I don't know that I
9 would call it a predictive tool, it is simply something
10 you are testing to see if it is true or not.

11 MR. HANNA: Q. Well, that's perhaps why
12 I wanted to have the linkage included. To come to the
13 hypothesis that the guidelines have no effect and to
14 make that testable, you would normally break that down
15 into a series of cause/effects, why you think that's
16 the case?

17 DR. EULER: A. Sure. I would call them
18 all a number of testable hypotheses, sure, and they
19 would involve testing cause and effect relationships,
20 yes.

21 Q. And here is where I am coming from.
22 In the interim, in the time that this effectiveness
23 monitoring program is ongoing, the ten years or
24 whatever, and it may well be much longer than that
25 before we can satisfy all of the critics out there--

1 A. Yes.

2 Q. --that we still have to make
3 decisions in that interim?

4 A. Yes, indeed we do.

5 Q. And the question is: Given that
6 information that you are putting together, that best
7 available information that you are consulting with the
8 experts and whatever, that's available there as the
9 best knowledge we have at that time?

10 A. Yes.

11 Q. My question is: Why not use that
12 knowledge to the best available until we get better
13 information?

14 A. Oh well, we will, absolutely.

15 THE CHAIRMAN: I mean, this goes back to
16 your committees and everything else; does it not?

17 DR. EULER: Yes. Oh, yes.

18 THE CHAIRMAN: You have missed a chunk of
19 evidence I think, Mr. Hanna.

20 MR. HANNA: I apologize for that, Mr.
21 Chairman. Unfortunately I didn't have as much time to
22 prepare as I expected and I didn't go through all the
23 other evidence available.

24 Q. Well, maybe the dawn of understanding
25 is shining on me at this point, Dr. Euler. Are you

1 ecting then that as a result of this first step in
2 M or Mega-GEM or whatever we want to call it, that
3 re will be immediate revisions to the guidelines or
4 t you might even have in fact a rudimentary HSA at
5 t point?

6 DR. EULER: A. Well, you see, I just
7 t tell you exactly when we are going to revise the
8 delines. We will revise them as soon as we
9 mulate information and that that information
10 cates we should revise them.

11 Now, I just can't say when that is going
12 appen, it could be in a year or two years.

13 THE CHAIRMAN: But that doesn't take away
14 the evidence I think we heard yesterday or the day
15 ore that even though the guidelines aren't revised
16 ally, bulletins and other directions--

17 DR. EULER: That's right.

18 THE CHAIRMAN: --may still go into the
19 d as you learn more.

20 DR. EULER: Sure.

21 THE CHAIRMAN: --so that in the field you
22 actually practising taking into account new
23 ancements; is that correct?

24 DR. EULER: Yes, that's correct.

25 MR. HANNA: Q. When do you expect this

1 first step in MGEM or whatever to occur, to finish?

2 DR. EULER: A. And the first step is the
3 construction of the testable hypotheses?

4 Q. I will use your words, yes.

5 A. Well, again, it is difficult to say
6 for sure, but certainly that phase would be mostly
7 complete within a year or so I would think, just as a
8 rough estimate.

9 Q. With trepidation, I say, perhaps
10 before this hearing is finished?

11 A. Well, let's hope so.

12 THE CHAIRMAN: And then we can hold
13 another hearing on the hypotheses, I suppose.

14 MR. HANNA: I hope not, Mr. Chairman.

15 DR. QUINNEY: No thanks, Mr. Chairman.

16 DR. MacLEAN: Mr. Hanna, could I
17 interject, maybe I can help out here and I want to
18 switch a little bit to talking about the fish model
19 which I know a little bit better.

20 I think at the start of the ESSA exercise
21 we developed a very preliminary predictive model that
22 predicted numbers of fish in streams and lakes. There
23 were a number of major uncertainties identified in
24 going through that exercise and a judgment was made, a
25 professional judgment of the participants in the

1 exercise that this was not a tool which could be used
2 for management. That judgment was made about the
3 model. The uncertainties were sufficiently large that
4 that was unlikely, and it just was not suitable for
5 management predictions at this time.

6 The program was designed to address the
7 major uncertainties that were identified in that model.
8 If we took a habitat supply analysis approach to
9 fisheries, we would in my...

10 THE CHAIRMAN: Professional opinion.

11 DR. MacLEAN: ...professional opinion -
12 thank you, Mr. Chairman - end up in the same place. We
13 would end up with the same major uncertainties about
14 links between habitat and numbers of fish.

15 We would end up with the same set of
16 questions and we would have to make a judgment based on
17 a preliminary habitat supply model that's very similar
18 to the judgment we had to make about the predictive
19 model we developed in the ESSA exercise.

20 My sense right now is that we would make
21 the same judgment at this time; that it is not a
22 predictive tool for management, it is a predictive tool
23 for planning, scientific research and making sure that
24 available resources are focused on critical questions,
25 but I think that's the extent of it at this time.

1 MR. HANNA: Q. Well, I am encouraged by
2 one thing you said and that is that you realize that
3 habitat supply analysis could be applied to fisheries
4 also?

5 DR. MacLEAN: A. Yes, it can.

6 Q. It is somewhere I haven't gone yet,
7 but it was on the agenda for our own case but, however,
8 I won't enter into that now.

9 The one thing that raises, though, Mr.
10 MacLean and, that is, you are suggesting there is an
11 alternative?

12 A. There are a variety of alternatives.

13 Q. Right. And what is the alternative
14 that you are suggesting in the case of fisheries to
15 deal with the interim, to deal with the time between
16 now and until this effectiveness monitoring program or
17 the next one or the next one --

18 A. I suggest we've put forward that
19 alternative, Mr. Hanna, which are guideline
20 alternatives.

21 Q. But is not implicit in those
22 guidelines everything that was in the ESSA workshop and
23 in an HSA?

24 A. Yes, that's true. An alternative to
25 doing what with what?

1 Q. An alternative to laying out exactly
2 the rationale for the guidelines in an explicit,
3 quantitative way?

4 A. We do not feel, based on the
5 uncertainties, that we can do that. We think we can,
6 as the hypothesis suggests, predict direction, we think
7 we can build models with major uncertainties in them
8 that do more than that, but we are not willing, I don't
9 think, to produce a predictive management tool.

10 THE CHAIRMAN: Because of the lack of
11 data?

12 DR. MacLEAN: Because of -- it is more
13 than just data, it's understanding I think that
14 underlies that.

15 THE CHAIRMAN: Right.

16 MR. HANNA: Q. Yes, I understand that.
17 I guess what I am saying is, is there a way to get away
18 from that; in other words, your guidelines implicitly
19 have all those linkages built into them?

20 DR. MacLEAN: A. They are assumed within
21 it, yes.

22 Q. So that you don't get away from the
23 uncertainty, from the lack of knowledge and the lack of
24 data by employing the guidelines, you simply cover it
25 up?

1 A. We recognize that decisions have to
2 be made in the interim and we provided advice on making
3 those decisions through the guidelines.

4 Q. I am just going to read you one
5 passage here. Perhaps I can refer to it later, but it
6 is out of the March, '88 ESSA Report, Exhibit 381, and
7 they make the statement that: To suggest that the
8 guidelines are effective requires that there is a
9 connection between the habitat and the population.

10 I may have phrased that not exactly, but
11 I can get the exact reference, if you will. But for
12 the time being, do you disagree with that statement?

13 A. In general, no, I don't disagree with
14 it.

15 Q. So that we don't gain anything by not
16 putting out explicitly these cause/effect linkages?

17 A. I think we have quite explicitly put
18 them out in the various ESSA documents.

19 MR. HANNA: Mr. Chairman, I think I am
20 going to come back to that topic perhaps when I am
21 better organized with respect to that.

22 Q. Dr. MacLean, I would like to touch on
23 this matter of whether or not the models and our level
24 of understanding is adequate for management decisions.

25 DR. MacLEAN: A. Mm-hmm, okay.

1 Q. And it is somewhat similar to the
2 catch-22 question I indicated before: How do we know
3 that we know enough; and, that is, how do you not know
4 enough -- how do you know you don't know enough to make
5 management decisions?

6 A. Perhaps to give you an example. One
7 of the major uncertainties identified in the initial
8 modelling exercise done by ESSA for fisheries - and
9 here I am reading from Exhibit 380 on page 32 - the
10 third major uncertainty on page 32 is the ability of
11 fish populations to compensate for impacts on one life
12 history stage by increasing survival on growth rates --
13 survival or growth rates at another stage.

14 That is a major uncertainty. Being wrong
15 on that uncertainty and making the wrong assumption
16 about which way it is has very large resource
17 management implications. As a result of that, the
18 approach that's in the guidelines was an extremely
19 conservative one, it assumes zero compensation ability
20 of fisheries.

21 Q. What you are telling me is that's
22 simply a strategy to deal with uncertainty, but there
23 is nothing to prevent you from using that strategy for
24 the quantitative predictive tool?

25 A. But if you want to predict absolutely

1 numbers, which is I think what a predictive management
2 tool would want to do, the results of making the wrong
3 assumption in managing one's fisheries by that
4 assumption are quite catastrophic.

5 Q. Exactly. And so that's the reason
6 you would look at the sensitivity of the model to that
7 particular relationship?

8 A. That was what was done through the
9 ESSA modelling exercise.

10 Q. Well, I was not aware that was done.
11 I was told by Dr. McNamee that that was not done.

12 A. Not a formal - I think in your terms,
13 a formal sensitivity analysis, no.

14 Q. But what I am getting at is, your
15 statement in no way precludes that approach, it simply
16 says if you are going to take that approach do it
17 cautiously, likewise the same strategy you have used in
18 terms of employing these Fish Habitat Guidelines?

19 A. Basically we have advocated in the
20 guidelines taking an extremely conservative approach,
21 one that opts for no loss on a net basis of fish
22 habitat.

23 Q. Well, that raises of course another
24 issue that's outside of this hearing - I won't get into
25 that at the present time - but are you suggesting to me

1 then that with the current restrictions, the setbacks,
2 the 30-metre, 60, 90-metre setbacks, that it is your
3 position that there will be no impact on the fisheries
4 whatever in any case?

5 A. That is what we are expecting, that
6 is what the provincial effectiveness program is
7 designed to look at.

8 Q. Perhaps I can go back to Dr. Euler.
9 Perhaps you can shed some more light on this
10 effectiveness monitoring program with respect to the
11 Moose Habitat Guidelines and the Tourism Guidelines.
12 One of my concerns with assessing their effectiveness
13 is the fact that they are highly discretionary?

14 DR. EULER: A. Yes.

15 Q. And, therefore, it's very difficult
16 to determine their effectiveness because of the
17 confounding influence of discretion that is applied by
18 the individual biologist?

19 A. That's right. That's why it is
20 taking so long and costing so much money because it is
21 a very difficult task.

22 Q. But how do you test when there is
23 discretion in a system and not cause/effect -- a direct
24 cause/effect linkage?

25 A. Well, you don't test the discretion,

1 you test the guidelines as they are applied in a
2 specified form, that is what you test. You don't test
3 the fact that a biologist may apply it somewhat
4 differently, you'd say --

5 Q. Isn't that the rub though?

6 A. Well, of course, that's very
7 difficult, sure. That's a difficult part of what we
8 are trying to do.

9 Q. So even if we see that the guidelines
10 as set out in the experimental design which may come up
11 with an effectiveness monitoring program work, it
12 doesn't carry over then that that will in fact take
13 place on the ground because we still have that
14 discretionary element that comes in from the biologist?

15 A. Yes.

16 THE CHAIRMAN: Would it not follow, Mr.
17 Hanna, that if you do this effective testing over a
18 period of time and find out that in fact it does work,
19 you could then specify more particularly in guidelines
20 and take away some of the discretion after you have
21 seen --

22 DR. EULER: Sure, right. Once you have
23 the knowledge, that's exactly what you can do.

24 MR. MARTEL: Could I ask a question then.
25 But you are dealing with a smaller group when you are

1 going to do the testing and you'll have more knowledge
2 of how the individuals applied the guidelines, won't
3 you, as you do the testing than you would if it covered
4 the whole...

5 DR. EULER: You mean how the individual
6 managers apply them?

7 MR. MARTEL: Yes, the individual managers
8 within the test itself.

9 DR. EULER: Well, no. No, that won't be
10 part of the test, if I understand --

11 MR. MARTEL: No, but I am simply saying
12 that the control, the discussion that you will have
13 with fewer people will lead to a more uniform
14 application of what's going on at the time?

15 DR. EULER: I think so, yes. Yeah, I
16 think so.

17 MR. MARTEL: So that discretion won't be
18 as wide as it would if it applied to a whole region?

19 DR. EULER: Probably not. Yes, very
20 likely.

21 THE CHAIRMAN: Are we correct, Dr. Euler,
22 that the reason you can't be specific or put in a
23 larger element of specificity in the guidelines, such
24 as moose guidelines and the tourism guidelines as you
25 have done in the fisheries guidelines in certain areas,

1 is because you don't have that knowledge base?

2 DR. EULER: Yes.

3 THE CHAIRMAN: That's what you have to
4 obtain by application of your best guess as to what the
5 effect will be?

6 DR. EULER: Yes.

7 THE CHAIRMAN: And then test that to make
8 sure that it occurred in the way that you thought it.

9 DR. EULER: Indeed.

10 THE CHAIRMAN: And if you have a track
11 record to rely on, at that point you can then tighten
12 up the guidelines by making them more specific?

13 DR. EULER: Yes.

14 THE CHAIRMAN: Is that sort of the
15 methodology?

16 DR. EULER: Yeah, that's the general
17 thrust of thought there, sure.

18 MR. HANNA: Q. Taking the HSA approach,
19 is not implicit what you are doing the need to lay out
20 a habitat supply relationship model through your
21 effectiveness program?

22 DR. EULER: A. Well, a habitat supply
23 model may well come out of the work that we are doing.
24 I don't know that it's implicit in it.

25 Q. The reason I say that, Dr. Euler,

1 goes back to this matter that to say that the
2 guidelines are effective, in fact to develop the
3 prescriptions in the guidelines one must implicitly
4 have a connection between the habitat and the
5 population?

6 A. Yes. At least that, yes.

7 Q. And, therefore, to test those
8 guidelines in a scientifically rigorous way one must
9 make explicit, in quantitative terms, those
10 relationships?

11 A. Yes, right, that's right.

12 Q. And that is in fact habitat supply
13 analysis?

14 A. Okay. So are you saying we are doing
15 habitat supply analysis?

16 Q. I'm saying that by taking that
17 investment that is proposed to be made in terms of
18 testing the guidelines, if by turning that investment
19 very slightly, refocusing it slightly, that in fact the
20 province could have a habitat supply analysis and, in
21 fact, at the end of the day that's what you are going
22 to end up with regardless?

23 A. Well, it is certainly true that at
24 the end of the day we may have habitat supply analysis,
25 certainly. That's a clear possibility.

1 Q. And that there is no way around it?

2 A. Well, I'm not so sure I would go that
3 far.

4 Q. Well, that's why I am saying to you
5 that there has to be a connection between -- for the
6 guidelines to be determined to be effective, you have
7 to demonstrate a connection between the habitat and the
8 population.

9 MS. MURPHY: A moose population, I think
10 you said.

11 MR. HANNA: A moose population.

12 DR. EULER: Yes.

13 MR. HANNA: There are moose guidelines.

14 MS. MURPHY: And habitat for moose you
15 are talking about, is my question.

16 MR. HANNA: Well, we can take this into
17 the featured species approach, if you want. I was
18 trying to keep it simple at the present time, but we
19 will move into that at the appropriate time.

20 DR. EULER: See, it is hard -- when you
21 talk about habitat supply analysis, it is hard for me
22 always to know if you mean as a routine operational
23 tool within the Ministry, say, or if, say, a local
24 person has it immediately available versus having it
25 available as something that only a few people use, for

1 example.

2 And I see that making it operational for
3 everybody is one thing and that's part of what I mean
4 when I talk about the cost. There is a lot behind
5 habitat supply analysis, as I understand it, other than
6 simply knowledge of moose and moose habitat and the
7 quantitative link between them.

8 I mean, granted those are important
9 elements, I don't deny that at all, and they lead --
10 and they let you, they give you the ability to do
11 habitat supply analysis certainly, but I'm not sure
12 that automatically leads you there.

13 MR. HANNA: Well, unfortunately, Dr.
14 Euler, you haven't had the benefit of hearing our case
15 yet so we are at a bit of a disadvantaged position, but
16 I am sure we will clarify that with you before we are
17 finished.

18 Mr. Chairman, how late do we plan to sit
19 today?

20 THE CHAIRMAN: Eight more minutes.

21 MR. HANNA: I couldn't complain about
22 being explicit. Mr. Chairman --

23 THE CHAIRMAN: That's more than a
24 guideline.

25 MR. CASSIDY: That's a term and

1 condition.

2 MR. HANNA: Mr. Chairman, what I would
3 suggest is that I would like to now present a couple of
4 papers that I will want to talk to this panel about
5 when we return on Tuesday and there might be a time now
6 to enter it and -- or at least provide it to the panel
7 so that they will a chance to review it.

8 I would have normally given this to the
9 panel ahead of time, but because of the change in the
10 time I didn't have time to do that, and I would then
11 ask that I would continue on Tuesday morning and I will
12 certainly be finished by Tuesday evening for sure, and
13 hopefully earlier.

14 THE CHAIRMAN: Well, hold on, hold on,
15 just a moment. We had assumed that you would take a
16 day.

17 MR. HANNA: Yes, Mr. Chairman.

18 THE CHAIRMAN: And we are going to finish
19 this panel next week, we have three days, and we have
20 the other parties who have been scheduled to follow
21 you. In fact, there was a switch in the order which we
22 didn't object to, as you know.

23 If you are talking about another full
24 day, then we are talking a day and a half essentially
25 for your evidence and that will not allow us to finish.

1 We have a number of matters to cover next
2 week, as you are aware. We are going to be scoping 17
3 on Tuesday, we are going to deal with the remainder of
4 the presentations regarding counsel and
5 representatives' relationships with the media, which
6 includes your submissions on that at that time.

7 We are going to start next Tuesday at
8 8:30 in the morning and we would hope, Mr. Hanna, that
9 you will be through by the lunch hour, and we are
10 willing to sit until one o'clock or whatever we have to
11 in terms of perhaps having a late lunch. But we are
12 not counting on a day and a half from you because that
13 really, in view of the unfortunate circumstances of not
14 being able to sit last week, will make it impossible
15 for us to finish this panel.

16 MR. HANNA: Well, I will --

17 THE CHAIRMAN: And there are some major
18 problems when we don't finish this panel next week,
19 because--

20 MR. HANNA: Dr. Baskerville is coming.

21 THE CHAIRMAN: --Dr. Baskerville is
22 coming and this whole panel is under cross-examination,
23 they should not be under it for that length of time,
24 can't discuss it amongst themselves, et cetera, et
25 cetera, and we see no reason why we can't finish.

1 So what we would ask you to do over the
2 weekend is to really focus the remainder of your
3 examination so that you will have close to four and a
4 half, five hours on Tuesday to complete your case,
5 which I would suggest to you in normal circumstances
6 for some other tribunals is a day.

7 MR. HANNA: Mr. Chairman, I am not going
8 to quibble about how much is in a day. I will
9 certainly do that.

10 THE CHAIRMAN: Okay.

11 MR. HANNA: Can I distribute those papers
12 now, Mr. Chairman?

13 THE CHAIRMAN: Very well. We might as
14 well give them an exhibit number now, if you like.

15 MR. HANNA: The first is a letter from
16 Ms. Blastorah regarding the Ministry's response to the
17 National Forest Sector Strategy Implementation Progress
18 Report. The letter is dated October 12th, 1989.

19 THE CHAIRMAN: Sorry, October...?

20 MR. HANNA: 12th, 1989.

21 THE CHAIRMAN: Exhibit 960.

22 ---EXHIBIT NO. 960: Letter dated October 12th, 1989
23 from Ms. Blastorah re: The
24 National Forest Sector Strategy
 Implementation Progress Report.

25 MR. HANNA: I will read them all, Mr.

1 Chairman.

2 The second is scoping meeting minutes,
3 Effects Monitoring to Evaluate Timber Management
4 Guidelines, and I don't have a date on these. I
5 believe they were prepared by ESSA.

6 And the last is a publication by
7 Schuerholz, S-c-h-u-e-r-h-o-l-z, McNamee and Massie.

8 MS. MURPHY: That is McNamee, I think.

9 MR. HANNA: Pardon me, Dr. McNamee.
10 Estimation of the effect of intensive logging on
11 ungulates in the White River drainage.

12 THE CHAIRMAN: All right. The second
13 document, the ESSA one, will be 961 and this last
14 report will be 962.

15 ---EXHIBIT NO. 961: Document entitled: Effects
16 Monitoring to Evaluate Timber
17 Management Guidelines (Scoping
Meeting Minutes).

18 ---EXHIBIT NO. 962: Publication entitled: Estimation
19 of the effect of intensive logging
20 on ungulates in the White River
drainage, authored by Schuerholz,
McNamee and Massie.

21 MS. MURPHY: And, Mr. Chairman, if I
22 could give you one more piece of paper before everybody
23 goes away with respect to a matter that was raised
24 earlier today.

25 I would like to provide MNR policy No.

1 TS020406, District Cutting Licence Used as an Interim
2 Cutting Authority. This is with respect to some
3 questions that were raised earlier by Mr. Edwards.

4 The policy explains:

5 "The following procedure is to be used
6 only after the district has received
7 notification from Timber Sales Branch
8 that the licence proposal has been
9 approved..."

10 And the policy sets out how one goes
11 about dealing with those interim district cutting
12 licences.

13 THE CHAIRMAN: Okay. That will be
14 exhibit 963.

15 MS. MURPHY: (handed)

16 THE CHAIRMAN: Thank you.

17 ---EXHIBIT NO. 963: MNR policy No. TS 020406,
18 District Cutting Licence Used as
an Interim Cutting Authority.

19 THE CHAIRMAN: Is that it, counsel?

20 MS. MURPHY: Yes.

21 THE CHAIRMAN: Very well. We will
22 adjourn until Tuesday at 8:30 a.m.

23 Thank you.

24 ---Whereupon the hearing adjourned at 3:05 p.m., to be
25 reconvened on Tuesday, November 28th, 1989,
commencing at 8:30 a.m.

